Office-Supreme Court, U.S.
FILED
JUL 23 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-1074

In the Supreme Court of the United States

OCTOBER TERM, 1980

RICHARD W. VELDE, ET AL., PETITIONERS,

v.

NATIONAL BLACK POLICE ASSOCIATION, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOINT APPENDIX

Volume II

Petition for writ of certiorari filed December 29, 1980
Certiorari granted May 4, 1981.

Index to Appendix

District Court Docket Entries 1

Court of Appeals Docket Entries 5

Second Amended Complaint (January 2, 1976)..... 11

Plaintiffs' Motion for a Preliminary Injunction and Writ of Mandamus (January 16, 1976) 46

Affidavit of E. Richard Larson and Exhibits..... 51

Affidavit of Penelope Brace and Exhibits..... 219

Affidavit of Ollie Glover and Exhibits 226

Defendants' Motion to Dismiss or for Summary Judgment (February 9, 1976) 234

Affidavit of Richard W. Velde and Attachment 1 . 236

Affidavit of Edward H. Levi and Attachment 3 .. 247

Affidavit of Charles W. Work and Attachments .. 251

Affidavit of Herbert C. Rice 262

Statement of Reasons (excluding attachments and appendix) 265

Plaintiffs' Opposition to Defendants' Motion to Dismiss or for Summary Judgment (March 24, 1976) 304

Statement of Genuine Issues 309

Affidavit of E. Richard Larson Pursuant to Rule 56(f) 340

Affidavit of Bruce Bailey and Exhibits 346

Affidavit of Kristen Heemstra and Exhibits 423

Affidavit of Kent McKinney and Exhibit A 441

Affidavit of Penny Orazetti and Exhibit 451

Affidavit of Roberta Ledyard 458

Affidavit of Robert Booth and Exhibits 462

Affidavit of Jennie McAllister and Exhibits..... 476

Affidavit of E. Richard Larson Pursuant to Rule 56(a)..... 493

Order granting the petition for a writ of certiorari ... 495

SUMMARY OF AWARDS BY FUND TYPE AND CRIMINAL JUSTICE COMPONENTS
(in thousands of dollars as of 7/31/75)

	Police		Courts		Corrections		Total Police Courts, Corrections	Obligation Authority	% Obligation Authority Represented
1969									
Block	18,285	79%	1,881	8%	2,932	13%	23,038		
Non Block	4,490	66%	496	7%	1,844	27%	6,830		
Total	22,775	76%	2,377	8%	4,776	16%	29,028	60,000	50%
1970									
Block	110,972	63%	14,473	8%	50,039	29%	175,484		
Non Block	24,599	62%	4,505	11%	10,718	27%	39,822		
Total	135,571	63%	18,978	9%	60,757	28%	215,306	267,937	80%
1971									
Block	177,203	50%	40,248	11%	135,051	39%	353,302		
Non Block	35,618	34%	10,148	10%	59,193	56%	104,959		
Total	212,821	46%	50,396	11%	195,044	43%	458,261	528,954	87%
1972									
Block	201,051	46%	72,528	17%	159,488	37%	433,067		
Non Block	64,282	42%	22,901	15%	64,601	43%	151,784		
Total	266,133	46%	95,429	16%	224,089	38%	585,651	698,723	84%
1973									
Block	216,455	47%	72,731	16%	170,708	37%	459,894		
Non Block	69,943	38%	33,186	18%	80,740	44%	183,869		
Total	286,398	44%	105,917	17%	251,448	39%	643,763	841,166	77%
1974									
Block	163,319	44%	76,151	20%	134,617	36%	374,087		
Non Block	54,592	32%	21,796	13%	94,086	55%	170,474		
Total	217,911	40%	97,947	18%	228,703	42%	544,561	870,526	62%
1975									
Block	33,330	40%	15,615	19%	26,611	33%	81,556		
Non Block	59,174	34%	36,139	21%	77,758	45%	173,071		
Total	98,504	39%	51,754	20%	104,369	41%	254,627	862,171	30%
Total									
Block	927,615	49%	293,627	15%	680,246	36%	1,901,288		
Non Block	312,698	38%	129,171	15%	383,940	47%	830,809		
Total	1,240,113	45%	422,798	16%	1,069,186	39%	2,732,097	4,129,477	[illegible]

TITLE:
KNOWN OFFENDER FILE

AWARD AMOUNT:
$124,395

FUNDING HISTORY:
0 71 DF $124,395

GRANTEE NAME AND ADDRESS:
OAKLAND POLICE DEPT.
455 SEVENTH STREET
OAKLAND CA 94607

GRANT NO.:
710F091067

PROJECT DIRECTOR:
GEORGE HART & RAYMOND BROWN, DEP. CHIEFS

PROJECT SUMMARY:
THE OAKLAND KNOWN OFFENDER FILE WILL BE COMPUTERIZED. IT WILL PROVIDE INVESTIGATIVE LEADS, THEREBY CREATING AN INCREASE IN CRIME CLEARANCE RATES. THERE WILL BE AN INTERFACE BETWEEN THE COMPUTER AND A HIGH SPEED MICROFILM RETRIEVAL SYSTEM CONTAINING PHOTOGRAPHS AND FINGERPRINTS. THE DATA RETRIEVAL PROGRAM WILL BE DESIGNED FOR MAXIMUM PRACTICAL FLEXIBILITY SO THAT ANY COMBINATION OF FILE ELEMENTS MAY BE EMPLOYED AS SEARCH PARAMETERS. THE SYSTEM WILL HAVE REGIONAL USE AND BE AVAILABLE AS A SERVICE TO LAW ENFORCEMENT AGENCIES IN THE OAKLAND METROPOLITAN AREA. THIS PROPOSAL, IN THE AMOUNT OF $124,395 FITS WITHIN THE SCOPE OF PROGRAM C--IMPROVED POLICE SERVICES AND OPERATIONS (INCLUDING POLICE/COMMUNITY RELATIONS) AS DESCRIBED IN LEAA FY-71 GUIDE FOR DISCRETIONARY GRANT PROGRAMS. IT IS A LARGE CITY SPECIAL GRANT AND IS AUTHORIZED BY P.L. 90-351, AS AMENDED.

TITLE:
MINORITY RECRUITING PROGRAM FOR THE BAY AREA REGION

AWARD AMOUNT:
$30,618

FUNDING HISTORY:
0 72 DF $30,618

GRANTEE NAME AND ADDRESS:
OAKLAND POLICE DEPARTMENT
455 SEVENTH STREET
OAKLAND CA 94607

GRANT NO.:
720F090031

PROJECT DIRECTOR:
HOWARD DILSAVER,LT. OF POLICE

PROJECT SUMMARY:
THIS JOINT PROPOSAL IS FOR A REGIONAL MINORITY RECRUITMENT PROGRAM. THE OAKLAND POLICE DEPARTMENT, IN COOPERATION WITH THE SAN FRANCISCO, BERKELEY AND RICHMOND POLICE DEPARTMENTS, WILL SPONSOR THE PROJECT. RADIO, TELEVISION AND OUTDOOR MEDIA WILL BE UTILIZED FOR PUBLIC SERVICE MESSAGES. THE FILMS AND TAPES TO BE USED IN THE PROJECT WILL BE DEVELOPED BY A PROFESSIONAL ADVERTISING AGENCY WITH A RECORD OF SUCCESS IN DESIGNING MINORITY-ORIENTED AD CAMPAIGNS. ALL MEDIA ADS WILL FEATURE A TOLL-FREE TELEPHONE NUMBER. INQUIRY BY THE PROSPECTIVE APPLICANTS AND THE SUBSEQUENT FOLLOW-UP BY RECRUITERS WILL BE GREATLY SIMPLIFIED BY THIS ARRANGEMENT. FOLLOW-UP CONTACTS REGARDING POLICE EMPLOYMENT WILL BE MADE BY THE AGENCY WITH JURISIDICTION OVER THE AREA IN WHICH THE POTENTIAL RECRUIT LIVES. ACTIVE PARTICIPATION IN THE PROGRAM WILL BE LIMITED TO THE FOUR LARGEST URBAN LAW ENFORCEMENTS AGENCIES IN THE REGION; HOWEVER, SMALLER POLICE DEPARTMENT IN SATELLITE CITIES WILL RECEIVE REFERRALS WHEN THE PROSPECT LIVES WITHIN THEIR JURISDICTION.

CITY: RICHMOND

Best Copy Available

LEAA NON-BLOCK GRANTS
TO CITY LEVEL ENFORCEMENT AGENCIES, SPECIFIC CITIES

TITLE:
RICHMOND POLICE DEPT. PSYCHIATRIC AIDE

AWARD AMOUNT:
$10,000

FUNDING HISTORY:
0 70 DF $10,000

GRANTEE NAME AND ADDRESS:
RICHMOND POLICE DEPT.
HALL OF JUSTICE
RICHMOND CA 94804

GRANT NO.:
70DF090186

PROJECT DIRECTOR:
ROBERT A. MURPHY

PROJECT SUMMARY:
THE RICHMOD POLICE DEPARTMENT IS APPLYING FOR FUNDS TO EMPLOY DR. JEFFREY A. SCHWARTZ, A CLINICAL PSYCHOLOGIST, AS A PSYCHIATRIC AIDE TO THE DEPARTMENT UNDER THE PROVISIONS OF LEAA POLICE PROFESSIONAL AIDES CATEGORY OF THE DISCRETIONARY GRANTS PROGRAM. THE PURPOSES OF THIS PROGRAM ARE TO EXPAND AND FACILITATE THE EFFORTS OF THE RICHMOND POLICE IN THE AREAS OF COMMUNITY RELATIONS, PERSONNEL SELECTION AND BEHAVIORAL TRAINING. A SPECIAL PURPOSE OF THIS PROGRAM IS TO DEMONSTRATE AN APPROPRIATE MODEL FOR POLICE CONSULTATION. FOR THE PAST TWO YEARS DR. SCHWARTZ HAS BEEN VOLUNTEERING CONSULTING SERVICES TO THE RICHMOND POLICE. THIS MEANS THAT THE DEPARTMENT IS FAMILIAR WITH SOME OF THE USES OF A PSYCHIATRIC AIDE AND FAMILIAR WITH DR. SCHWARTZ PERSONALLY; IT ALSO MEANS THAT DR. SCHWARTZ IS FAMILIAR WITH LAW ENFORCEMENT PROCEDURES IN GENERAL AND THE MEN ON THE RICHMOND FORCE IN PARTICULAR. THESE FACTORS GIVE THIS PROGRAM AN EFFECTIVE TWO YEAR "HEADSTART" OVER BEGINNING PROGRAMS. IN ADDITION, THE DISTRUST AND SUSPICION WITH WHICH POLICE OFTEN REGARD "SHRINKS" WILL NOT DEVELOP DURING THIS PROGRAM, BECAUSE MANY MEN ON THE RICHMOND POLICE DEPARTMENT ALREADY KNOW THE CONSULTANT QUITE WELL. THE RICHMOND POLICE DEPARTMENT AND THE CITY OF RICHMOND WILL BOTH BENEFIT FROM THIS PROGRAM.

TITLE:
POLICE HELICOPTER PATROL TO REDUCE CRIME RATE-RICHMOND

AWARD AMOUNT:
$150,000

FUNDING HISTORY:
0 71 DF $150,000

GRANTEE NAME AND ADDRESS:
CALIFORNIA COUNCIL ON CRIMINAL JUSTICE
1108 - 14TH STREET
SACRAMENTO CA 95814

GRANT NO.:
71DF090491

PROJECT DIRECTOR:
ROBERT A. MURPHY

PROJECT SUMMARY:
SUMMARY DESCRIPTION OF PROJECT: THE GRANT, IN THE AMOUNT OF $150,000, IS FOR THE CITY OF RICHMOND TO ESTABLISH A POLICE HELICOPTER PATROL TO REDUCE CRIME. STATISTICS INDICATE THE CITY TO HAVE A CRIME RATE THAT IS THIRD HIGHEST IN THE NATION. THE PROJECT WILL USE TWO HELICOPTERS, TRAIN FOUR PILOTS AND TWO OBSERVERS, AND PROVIDE FULL HELICOPTER PATROL FOR A PERIOD OF TWELVE MONTHS. IT IS EXPECTED THAT THE PATROL WILL REDUCE POLICE RESPONSE TIME TO CRIMES IN PROGRESS, INCREASE THE OPPORTUNITY TO OBSERVE CRIME SCENES, INCREASE THE ABILITY TO PURSUE FLEEING SUSPECTS, IMPROVE PATROL ASSISTANCE AND SECURITY, AND PROVIDE WIDER SCOPE OF PATROL IN REMOTE AND OTHERWISE INACCESSIBLE AREAS. THIS PROJECT MEETS CRITERIA OF LARGE CITY SPECIAL GRANTS PROGRAM, DILL SPECIAL EFFORTS TO REDUCE STREET AND VIOLENT CRIME OR CONCEIVED PROGRAMS AGAINST PARTICULAR CRIMES SUCH AS BURGLARY, ROBBERY, AUTO THEFT AND OTHERS AS DESCRIBED IN LEAA FY 70 GUIDE FOR DISCRETIONARY GRANT PROGRAMS AND AS AUTHORIZED BY SECTION 306, P.L. 90-351.

Best Copy Available

TITLE:
RICHMOND POLICE HELICOPTER PATROL

AWARD AMOUNT:
$75,000

FUNDING HISTORY:
0 72 OF $75,000

GRANTEE NAME AND ADDRESS:
RICHMOND POLICE DEPARTMENT
HALL OF JUSTICE
RICHMOND CA 94804

GRANT NO.:
72DF099019

PROJECT DIRECTOR:
LOURN G. PHELPS

PROJECT SUMMARY:
THE CITY OF RICHMOND HAS RECEIVED A FEDERAL DISCRETIONARY GRANT IN THE AMOUNT OF $150,000 FROM LEAA TO IMPLEMENT POLICE HELICOPTER PATROL. THE FEDERAL GRANT WILL EXPIRE ON 23 AUGUST 1971, AND THIS GRANT WILL ALLOW THE CITY OF RICHMOND TO EXTEND POLICE HELICOPTER PATROL FOR A PERIOD OF ONE YEAR TO 23 AUGUST 1972. OUR GOAL IS TO SUPPLEMENT POLICE GROUND PATROL WITH POLICE AERIAL PATROL IN AN EFFORT TO PROVIDE BETTER POLICE SERVICES TO THE CITY OF RICHMOND. WE INTEND TO PROVIDE A POSITIVE CRIME DETERRENT THROUGH THE USE OF THESE MOBILE AERIAL OBSERVATION PLATFORMS. THE IMPACT OF THE RICHMOND POLICE HELICOPTER PATROL PROGRAM IS DIRECTED AT OUR ENORMOUS CRIME RATE, AND OUR EVALUATION OF THE PROGRAM WILL BE BASED ON THAT IMPACT WITH CAREFUL CONSIDERATION OF COST EFFECTIVENESS. OUR INTENTION IS TO PROVIDE 2,928 HOURS OF POLICE HELICOPTER PATROL DURING THE PERIOD OF THIS GRANT.

TITLE:
YOUTH SERVICES PROGRAM: DRUG ABUSE PROGRAM

AWARD AMOUNT:
$25,000

FUNDING HISTORY:
0 72 OF $25,000

GRANTEE NAME AND ADDRESS:
RICHMOND POLICE DEPARTMENT
HALL OF JUSTICE
RICHMOND CA 94804

GRANT NO.:
72DF099023

PROJECT DIRECTOR:
LOURN G. PHELPS

PROJECT SUMMARY:
THE RICHMOND POLICE DEPARTMENT RECOGNIZED THAT THE ENORMOUS INCREASE OF DRUG-RELATED ARRESTS, ESPECIALLY IN THE RICHMOND MODEL NEIGHBORHOOD, ARE GREATLY AFFECTING THE OPERATIONS OF THE DEPARTMENT. THE DEPARTMENT HAS STUDIED THE FINDINGS OF DRUG-ABUSE EXPERTS AND HAS CONCLUDED THAT A PROGRAM COMBINING EDUCATION AND REHABILITATION IS THE BEST ANSWER TO THE DRUG PROBLEM WHICH FOCUSES UPON YOUNG PEOPLE IN THE MODEL NEIGHBORHOOD. THIS PROJECT PROPOSES THE ESTABLISHMENT OF A DRUG ABUSE SPECIALIST. HE WILL SERVE AS THE EXPERT IN HIS AREA FOR THE YSP, YOUTH SERVICES PROGRAM, CURRENTLY IN OPERATION UNDER THE CONTROL OF THE CONTRA COSTA PROBATION DEPARTMENT, IN THE MODEL NEIGHBORHOOD. HIS PRINCIPAL FUNCTIONS WILL BE EDUCATIONAL. HE WILL DEVELOP A 15-HOUR DRUG ABUSE CLASS AT CONTRA COSTA COLLEGE FOR EDUCATORS IN PARTICIPATING SCHOOLS IN THE MODEL NEIGHBORHOOD AREA. HE WILL ALSO DEVELOP AND IMPLEMENT IN-SERVICE TRAINING FOR SCHOOL COUNSELORS, WHO CURRENTLY LACK SPECIFIC EXPERTISE, YET ARE IN A KEY POSITION TO DEAL WITH AND RELATE TO DRUG USERS IN SCHOOLS. AS A RESULT, EACH MODEL NEIGHBORHOOD SCHOOL WILL HAVE AT LEAST ONE COUNSELOR WHO CAN SERVE AS A DRUG PROBLEM RESOURCE. DRUG EDUCATION IN RICHMOND AREA SCHOOLS WILL BE IMPROVED AS THE SPECIALIST WILL DEVELOP BILINGUAL CURRICULUM. ADDITIONAL TRAINING WILL BE HELD FOR REMAINING STAFF OF THE YSP WHICH WILL BE COMMUNITY ORIENTED.

Best Copy Available

LEAA SUBGRANTS, FY 72 - 76,
TO CITY LEVEL ENFORCEMENT AGENCIES, SPECIFIC CITIES

JUVENILE DELINQUENCY PREVENTION AND CONTROL PROJECT

GRANTEE NAME AND ADDRESS:
OAKLAND POLICE DEPARTMENT
POLICE ADMINISTRATION BUILDING
455 SEVENTH STREET
OAKLAND, CA 94607

AWARD AMOUNT:
$238,000

LEAA GRANT NUMBER:
73A06R0253

STATE GRANT NUMBER:
A1133-73

PROJECT SUMMARY:
THE MODEL JUVENILE DELINQUENCY PREVENTION AND CONTROL PROJECT (THRESHOLDS) IS A COMMUNITY BASED PROJECT THAT WILL PROVIDE A VIABLE ALTERNATIVE TO THE PRESENT JUVENILE JUSTICE SYSTEM. YOUTH WILL BE REFERRED TO THE PROJECT BY REPRESENTATIVES OF JUVENILE JUSTICE AGENCIES, TARGET AREA SCHOOLS, CHURCHES, DRUG PROGRAMS, RESIDENTS AND RECREATION PROGRAMS. THROUGH THE UTILIZATION OF EX-OFFENDERS AND NON EX-OFFENDERS AS STREETWORKERS, THRESHOLDS WILL PROVIDE COUNSELING, SOCIAL, CULTURAL, ECONOMIC, AND EDUCATIONAL ACTIVITIES. THE STREET WORKERS WILL DRAW UPON THEIR VAST KNOWLEDGE OF THE STREETS IN DEVELOPING POSITIVE APPROACHES TO SERVE YOUTH. IT IS OUR AIM TO PROVIDE DIRECT SERVICES TO 200 YOUTH.

CITY: RICHMOND

NEW POLICE CAREER LINES - IMPROVED POLICE COMMUNITY RELAT

GRANTEE NAME AND ADDRESS:
RICHMOND POLICE DEPARTMENT
HALL OF JUSTICE
RICHMOND, CA

AWARD AMOUNT:
$25,000

LEAA GRANT NUMBER:
72A06R0623

STATE GRANT NUMBER:
A727-72

PROJECT SUMMARY:
THIS PROJECT WILL ALLOW THE RICHMOND POLICE DEPARTMENT TO ESTABLISH, ON AN EXPERIMENTAL BASIS, A JOB POSITION ENTITLED COMMUNITY SERVICE OFFICER. THIS PROJECT WILL ACCOMPLISH THREE MAJOR OBJECTIVES: 1. COMMUNITY SERVICE OFFICERS (CSOS) WILL PROVIDE NEW TYPES OF COMMUNITY SERVICES. 2. COMMUNITY SERVICE OFFICERS WILL BE A SOURCE OF PRETRAINED MINORITY RECRUITS. 3. COMMUNITY SERVICE OFFICERS WILL RELIEVE SWORN OFFICERS OF SOME MINOR PATROL DUTIES SO THAT THEY WILL HAVE MORE TIME TO COMBAT SERIOUS CRIMES. THIS PROPOSAL DETAILS THE THIRD YEAR OF THIS PROJECT.

Best Copy Available

Best Copy Available

LEAA SUBGRANTS, FY 72 - 76,
TO CITY LEVEL ENFORCEMENT AGENCIES, SPECIFIC CITIES

RICHMOND POLICE DEPARTMENT PSYCHIATRIC AIDE

GRANTEE NAME AND ADDRESS:
RICHMOND POLICE DEPARTMENT
HALL OF JUSTICE
RICHMOND, CA

AWARD AMOUNT: $7,000
LEAA GRANT NUMBER: 72A06R0657
STATE GRANT NUMBER: A810-72

PROJECT SUMMARY:
THE RICHMOND POLICE DEPARTMENT PROPOSES TO CONTINUE ITS ONGOING PSYCHIATRIC AIDE PROGRAM FOR A THIRD YEAR. THE GENERAL OBJECTIVES OF THE PSYCHIATRIC AIDE DURING THIS THIRD YEAR WILL BE THE IMPLEMENTATION OF RECOMMENDATIONS ARISING FROM THE RICHMOND POLICE DEPARTMENT TRAINING AND EDUCATION SURVEY; THE CONTINUATION OF THE DEPARTMENT'S MINORITY RECRUITMENT COMMITTEE; THE COMPLETION OF AN EVALUATION OF THE DEPARTMENT'S SELECTION PROCEDURES WHICH IS CURRENTLY IN PROGRESS; THE CONTINUATION OF ADMINISTRATIVE CONSULTATION TO THE CHIEF OF POLICE; THE PSYCHIATRIC AIDE WILL ALSO MAINTAIN A PRIMARY ROLE IN PROGRAM PLANNING.

RICHMOND POLICE DEPT CRIME SPECIFIC: BURGLARY PROJECT

GRANTEE NAME AND ADDRESS:
CITY OF RICHMOND POLICE DEPARTMENT
HALL OF JUSTICE
RICHMOND, CA

AWARD AMOUNT: $176,000
LEAA GRANT NUMBER: 72A06R1314
STATE GRANT NUMBER: A947-72

PROJECT SUMMARY:
THE RICHMOND POLICE DEPARTMENT PROPOSES TO APPLY FOR FUNDS FROM THE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION VIA THE CALIFORNIA COUNCIL ON CRIMINAL JUSTICE FOR THE IMPLEMENTATION OF A CRIME SPECIFIC: BURGLARY PROGRAM. THIS PROGRAM, FOCUSING UPON THE REDUCTION OF RESIDENTIAL AND COMMERCIAL BURGLARIES WITHIN THE TOTAL CITY, WILL ENCOMPASS THE FOLLOWING BASIC AREAS: PUBLIC EDUCATION AND AWARENESS, IMPROVED SECURITY METHODS, IMPROVED INVESTIGATIONAL METHODOLOGY, IMPROVED SURVEILLANCE TECHNIQUES, AND DECREASING THE STOLEN MERCHANDISE RECEIVER MARKET.

RICHMOND POLICE DEPARTMENT INFORMATION AND COMMUNICATION CENTER

GRANTEE NAME AND ADDRESS:
RICHMOND POLICE DEPARTMENT
HALL OF JUSTICE
27TH AND MACDONALD AVE
RICHMOND, CA 94804

AWARD AMOUNT: $45,000
LEAA GRANT NUMBER: 73A06R0108
STATE GRANT NUMBER: A1381-73

PROJECT SUMMARY:
THE RICHMOND POLICE DEPARTMENT PROPOSES TO APPLY FOR FUNDS FROM THE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION VIA THE CALIFORNIA COUNCIL ON CRIMINAL JUSTICE, TO REPLACE ITS CURRENT DYSFUNCTIONAL COMMUNICATIONS AND INFORMATION SYSTEM. THE PROPOSED SYSTEM WILL PROVIDE FOR SEPARATE POLICE AND FIRE DISPATCH FUNCTIONS AND MAKE AVAILABLE A SECOND CHANNEL FOR AUXILIARY SERVICE REQUESTS. THE SECOND CHANNEL WILL ALSO BE AVAILABLE FOR AREA-WIDE WEST CONTRA COSTA COUNTY COLLABORATIVE USAGE.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

---

75 Civ. 1444

Judge Corcoran

NATIONAL BLACK POLICE ASSOCIATION ET AL.,
PLAINTIFFS,

v.

RICHARD W. VELDE, ET AL., DEFENDANTS.

AFFIDAVIT

State of Pennsylvania)
) ss.
County of Philadelphia)

PENELOPE BRACE, being duly sworn, deposes and says:

1. I am a named plaintiff in the above-styled case.

2. I am a female citizen of the United States and a resident of Philadelphia, Pennsylvania.

3. I have been employed as a police officer (designated as a "policewoman") with the Philadelphia Police Department since 1965.

4. The Philadelphia Police Department, as of November 1974, employed 8,245 sworn police officers, of whom only 74 (or .9%) were female.

5. Of nineteen job classifications for sworn officers in the Philadelphia Police Department, only four classifications, authorizing the employment of 86 females, are open to females: policewoman captain (1), policewoman lieutenant (2), policewoman sergeant (4), policewoman (79). The remaining fifteen sworn job classifications, authorizing the

employment of 8,276 males, are open only to males. Thus only 1.03% of the sworn officers may be female.

6. All of the female officers are permanently assigned to the Juvenile Aid Division, although some of them are temporarily assigned to other divisions or units such as the Community Relations Division or the Civil Affairs Unit. No female sworn officer, regardless of rank, is permitted to supervise any male sworn officer on a permanent basis, whether within or without the Juvenile Aid Division.

7. The Philadelphia Police Department has no program for recruiting female applicants. No female sworn officer has ever been permanently assigned to the Personnel Department for recruitment purposes. Advertising programs conducted on behalf of the Department are designed to attract male applicants.

8. Since the beginning of my employment in 1965, I have continuously received "superior" and "outstanding" performance evaluations. Most recently, on June 6, 1973, I received a "superior" evaluation. Prior to July 18, 1973, I had never received any reprimand or been charged with any misconduct in connection with the performance of my duties as a "policewoman."

9. On July 18, 1973, I filed a sex discrimination charge with the EEOC against the Philadelphia Police Department.

10. On July 20, 1973, I mailed a similar charge of employment discrimination based upon sex to LEAA. In that charge I requested "LEAA [to] consider holding up funding for the Police Department in Philadelphia, until such time as my complaint is resolved."

11. Five days later, on July 25, 1973, I was reassigned from the Juvenile Aid Division to the West Division, the division which is located farther from my home than any other division.

12. From approximately August 30, 1973, through approximately October 3, 1973, I was placed under surveillance by the Internal Security Division of the Philadelphia Police Department, a division under the direct supervision of Police Commissioner Joseph O'Neill.

13. By letter dated October 2, 1973, I was informed that I was to report for a "special psychiatric examination."

14. On November 7, 1973, I submitted an application for the positions of police corporal and detective. By letter dated December 24, 1973, from the Personnel Department of the Philadelphia Police Department, I was advised that I did not meet the requirements for the positions of police corporal or detective because I was not employed as a "policeman."

15. On November 26, 1973, the Philadelphia Police Department filed a statement of charges initiating dismissal procedures against me. On January 9, 1974, a hearing on the charges filed against me was held by the Department's Board of Inquiry.

16. On February 12, 1974, I filed a complaint in the United States District Court alleging unlawful sex discrimination in violation of Title VII of the Civil Rights Act of 1964 and of 42 U.S.C. § 1983 against the City of Philadelphia and its officials, *Brace* v. *O'Neill*, No. 74–339 (E.D. Pa., filed Feb. 12, 1974).

17. Three days later, on February 15, 1974, I was fired from my employment by the Philadelphia Police Department.

18. On appeal to the Civil Service Commission of the City of Philadelphia, I was reinstated on May 17, 1974. I continue to be employed as and currently am a police officer with the Philadelphia Police Department.

19. In response to my July 20, 1973 letter to LEAA, I received a letter dated August 7, 1973 from Herbert C. Rice stating that an "investigator" would be assigned to my complaint.

20. On August 9, 1973, I spoke by phone with Mr. Mahoney, an investigator for LEAA. Mr. Mahoney stated that LEAA would not suspend funding to the Philadelphia Police Department.

21. Shortly thereafter, during August, 1973, I wrote a letter to Mr. Henry Tribble, then Chief Investigator for LEAA, enclosing an article wherein Philadelphia Mayor

Frank Rizzo was quoted as opposing equal employment for female sworn officers in the Philadelphia Police Department. In my letter to Mr. Tribble, I wrote that I was "eager to talk to your investigators."

22. On September 28, 1973, I spoke by phone with Philip Bowen, an investigator for LEAA. Mr. Bowen indicated that he was monitoring my charge and that he would meet with me personally as soon as he obtained any information from the Philadelphia Police Department.

23. On or about October 24, 1973, I met personally with Mr. Bowen and Mr. Tribble, representatives of LEAA, whereupon we discussed my sex discrimination complaint against the Philadelphia Police Department.

24. On November 8, 1973, I visited the office of my congressman, Representative William J. Green. On November 30, 1973, Representative Green wrote to Herbert C. Rice encouraging action by LEAA's Office of Civil Rights Compliance. In response to his letter, Representative Green received a letter dated December 28, 1973 from Donald Santarelli, then Administrator of LEAA and the predecessor in office of Richard W. Velde, stating that the LEAA's "Office of Civil Rights Compliance has begun an investigation of Ms. Brace's complaint" and that "discussions are being held with Philadelphia officials with the goal of expeditious resolution of this matter."

25. Meanwile, on November 28, 1973, I informed Mr. Bowen of LEAA that formal charges had been filed against me by the Philadelphia Police Department. On December 5, 1973, Mr. Bowen advised me that the Department's charges were being dropped. On December 6, 1973, Mr. Bowen similarly advised my lawyer, Steven Waxman, that the charges were being dropped. On January 4, 1974, I informed Mr. Bowen that the charges had not been dropped and that the hearing was scheduled for January 9, 1974.

26. By letter dated February 4, 1974, from Herbert C. Rice, I was informed that the City of Philadelphia had failed to undertake "voluntary compliance with the civil rights laws and regulations affecting the Philadelphia Police Department as a recipient of funds from the Law Enforce-

ment Assistance Administration." [A copy of the letter is attached hereto as Exhibit A].

27. Thereafter, on February 19, 1974, a week after I had filed my own lawsuit, the Department of Justice also filed a complaint in the United States District Court for the Eastern Division of Pennsylvania alleging unlawful sex discrimination in violation of Title VII of the Civil Rights Act of 1964 against the City of Philadelphia and its officials, *United States* v. *City of Philadelphia*, No. 74–400 (E.D. Pa., filed Feb. 19, 1974).

28. On or about September 25, 1974, the Philadelphia Police Department announced that it intended to establish a "Pilot Project" whereby it would temporarily employ twenty-two females as police officers with the same duties and responsibilities of the more than 6,000 "policemen" then assigned to patrol sector work. Although more than 2,500 female applicants responded to the announcement, the Department did not implement the program.

29. The consolidated trials of *Brace* v. *O'Neill*, *supra*, and *United States* v. *City of Philadelphia*, *supra*, were scheduled to commence on January 27, 1975. Several weeks earlier, in the first week of January, I believe that LEAA awarded two $1,000,000 discretionary grants to the Philadelphia Police Department.

30. In the meantime, the consolidated federal court trials were delayed several days beyond January 27, 1975, while the United States Department of Justice, without my participation, discussed settlement with the City of Philadelphia.

31. On January 29, 1975, the United States Department of Justice entered into an agreement with the City of Philadelphia whereby the Police Department would hire an "experimental" recruit class, 50% of whom would be women who would be assigned to patrol sector work and whose work performance would be compared with that of the men as an "aid to the court." The agreement negotiated by the United States Department of Justice made no reference to the issues of promotion and back pay raised by me in my lawsuit. Although I refused to sign the agreement, the

Court granted a continuance of at least six months in both cases, pending the outcome of the "experimental" recruit class.

32. The "experimental" recruit class agreed to by the United States Department of Justice has yet to be implemented by the Philadelphia Police Department. I believe that the Police Department, however, has received approval in the past few weeks to receive another $1,000,000 in LEAA funding.

33. I believe that Philadelphia Police Department has received in excess of $8,000,000 in LEAA funding. LEAA has terminated LEAA funding to the Philadelphia Police Department for civil rights non-compliance.

/s/ _____
PENELOPE BRACE

Sworn to before me this day of September, 1975.

/s/_____
ERNEST J. GALLO
Notary Public

BRACE AFFIDAVIT
EXHIBIT A

UNITED STATES DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE
ADMINISTRATION
Washington, D.C. 20530

February 4, 1974

Mrs. Penelope Brace
5004 F Street
Philadelphia, Pennsylvania 19124

Re: 74-C-007

Dear Ms. Brace:

This letter is in regard to your complaint of sex discrimination against the Philadelphia Police Department and your subsequent complaint of retaliation and harassment.

Discussion and correspondence with officials of the City of Philadelphia have not resulted in a commitment by these officials to undertake significant steps to achieve what this agency believes to be voluntary compliance with the civil rights laws and regulations affecting the Philadelphia Police Department as a recipient of funds from the Law Enforcement Assistance Administration.

Accordingly, this letter is to advise you that LEAA has referred this matter to the Civil Rights Division of the Department of Justice for such action as it deems appropriate.

Sincerely,

/s/ _____
HERBERT C. RICE,
Director
Office of Civil Rights Compliance

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

---

75 Civ. 1444

Judge Corcoran

NATIONAL BLACK POLICE ASSOCIATION, ET AL.,
PLAINTIFFS,

v.

RICHARD W. VELDE, ET AL., DEFENDANTS.

AFFIDAVIT

State of California)
) ss.
County of Contra Costa)

OLLIE S. GLOVER, being duly sworn, deposes and says:

1. I am a named plaintiff in the above-entitled case.

2. I am a black citizen of the United States and a resident of Richmond, California.

3. I have been discriminated against by the Richmond Police Department.

4. The Richmond Police Department employs approximately 178 sworn police officers, of whom only 24 (or approximately 11.3%) are black. According to the 1970 census, the population of the City of Richmond was 36.2% black. Upon information and belief, the current population of the City of Richmond is 40% black.

5. All but three of the black officers hold the entry-level rank of patrolman. Of those black officers above the rank of patrolman, all three are sergeants (of a total of twenty-six sergeants). There are no black captains or lieutenants. It

was not until 1967 that any black officer was promoted above the rank of patrolman.

6. Until 1960, there were only two black police officers in the Richmond Police Department. These two officers were assigned duties on a racial basis, were assigned to the most undesirable shifts, and were denied membership in the Police Officers Association.

7. Applicants for entry-level employment as a patrolman are required to pass a written test, among other requirements. In November, 1974, the most recent occasion on which the test was obtained, 79% of the white applicants passed the test while only 30% of the black applicants passed. The written test has never been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the job of patrolman.

8. Other entry-level selection criteria include a 5'7" minimum height requirement, the consideration of arrest records, and a background investigation. On information and belief, each of these criteria has had a discriminatory impact (either race or sex), and none has been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the job of police officer.

9. Police officers who seek promotion to the rank of sergeant must have four years experience as a patrolman (or three years experience if the officer holds a graduate degree), and must rank among the top twelve in an examination consisting of a written test (weighted 10%), and a subjectively administered evaluation (weighted 90%). In the most recent examination, administered in January and February 1974, all three black applicants were eliminated. None of the above requirements has been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the job of sergeant.

10. Police officers who seek promotion to the rank of lieutenant must have attained permanent status as a sergeant, and must pass an examination consisting solely of a subjectively administered evaluation. In the most recent examination, administered in September 1974, all three eli-

gible black applicants were eliminated. Neither of the above requirements has been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the job of lieutenant.

11. I am a ten-year veteran of the Richmond Police Department currently holding the rank of sergeant. I have applied for but been denied promotion to the rank of lieutenant. In September, 1974, I was rejected for failing to rank high enough on the subjectively administered evaluation, thereby also barring me from reapplying for promotion for at least two years.

12. On March 5, 1975, various black officers, the Guardians of Justice and I filed a class action complaint in the United States District Court for the Northern District of California alleging unlawful racial discrimination in violation of 42 U.S.C. Sec. 1981 and Sec. 1983 against the City of Richmond and vairous of its officials, The *Guardians of Justice* v. *Richmond*, C-75-0439-SW (N.D. Cal., filed March 5, 1975). That case is currently in discovery, and no date has been set for a trial on the merits.

13. In July, 1975, I mailed a charge of discrimination, enclosing a copy of the *Guardians* complaint, to LEAA. [A copy of that charge is attached hereto as Exhibit A.]

14. In August, 1975, I received a reply letter from Herbert C. Rice acknowledging the pendency of *Guardians* in the federal court and stating that LEAA would "defer assertion of jurisdiction over similar subject matter until there has been a judicial resolution of that matter." [A copy of that letter is attached hereto as Exhibit B.]

15. The LEAA charge which I filed is not the only charge filed with LEAA against the Richmond Police Department. In April, 1973, an eighteen-page administrative complaint was filed with LEAA against Richmond and eighteen other California cities. That complaint, which was filed by a coalition of seven civil rights organizations, detailed the aforementioned discriminatory employment practices of the Richmond Police Department, noted that Richmond had received $272,894 in LEAA funding in 1971 and 1972, and sought the "termination or suspension" of LEAA funding.

16. I believe that LEAA, in response to the coalition's LEAA complaint, requested information from the Richmond Police Department about its employment practices, but declined to conduct an on-site investigation into those practices.

17. I believe that LEAA has undertaken no full investigation of the Richmond Police Department's employment practices in response to the coalition's complaint or to my charge. I believe that LEAA has classified the aforementioned LEAA charges as inactive because of the pendency of *Guardians of Justice* v. *Richmond, supra.*

18. I believe that the Richmond Police Department has received approximately $500,000 in LEAA funding. LEAA has never suspended the LEAA funding of the Richmond Police Department because of civil rights non-compliance.

OLLIE S. GLOVER

Sworn to before me this day of October, 1975.

Notary Public

GLOVER AFFIDAVIT
EXHIBIT A

Sgt. Ollie S. Glover
4846 State Court
Richmond, California 94804

July 8, 1975

Herbert C. Rice, Director
Office of Civil Rights Compliance
Law Enforcement Assistance Administration
United States Department of Justice
Washington, D.C. 20530

RE: LEAA Administrative Complaint

Dear Mr. Rice,

I am Black. I have been discriminated against on the basis of my race by the Richmond Police Department. I submit this complaint on behalf of myself and on behalf of the many others who have been discriminated against by the Richmond Police Department.

The details of this complaint may be summarized as follows:

(1) The Richmond Police Department employs approximately 178 sworn police officers, of whom only 24 (or 13%) are black officers. In contrast, approximately 40% of the present population of the City of Richmond are Black people.

(2) All but three of the Black officers hold the entry-level rank of patrolman. Of those Black officers above the rank of patrolman, all three are sergeants (of a total of twenty-six sergeants). There are no Black captains or lieutenants. It was not until 1967 that any Black officer was promoted above the rank of patrolman.

(3) Until 1960, there were only two Black police officers in the Richmond Police Department. These two officers were assigned the most undesirable shifts and were denied membership in the Police Officers Association.

(4) Applicants for entry-level employment as a patrolman are required to pass a written test. In November, 1974, the most recent occasion on which the test was administered

and the only instance in which racial data was obtained, 79% of the white applications passed the test while only 30% of the Black applicants passed. The written test has never been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the job of patrolman.

(5) Applicants for employment as a patrolman who pass the written test are required to pass an oral interview. In June, 1974, the most recent occasion the interview was administered and for which racial data is available, 34% of the white applicants passed the oral interview, while 0% of the Black applicants passed. The oral interview has never been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the job of patrolman.

(6) Police officers who seek promotion to the rank of sergeant must have three years experience as a patrolman and must rank among the top twelve in an examination consisting of a written test (weighted 10%), and a subjectively administered evaluation (weighted 90%). In the most recent examination, administered in January and February, 1974, all three Black applicants were eliminated. None of the above requirements have been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the job of sergeant.

(7) Police officers who seek promotion to the rank of lieutenant must have attained permanent status as a sergeant, and must pass an examination consisting solely of a subjectively administered evaluation. In the most recent examination, administered in September, 1974, all three eligible Black applications were eliminated. Neither of the above requirements has been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the job of lieutenant.

(8) I am a ten-year veteran of the Richmond Police Department currently holding the rank of sergeant. I applied for but was denied promotion to the rank of lieutenant in September, 1974. I was rejected for failing to rank high enough on the subjectively administered evaluation, there-

by also barring me from reapplying for promotion for at least two years.

For years I have been attempting to eliminate the above discriminatory practices, among others. All efforts have been unsuccessful.

Finally, on March 5, 1975, I, along with other named individuals, and the Guardians of Justice filed a lawsuit alleging unlawful racial discrimination against the City of Richmond and various of its officials. (*The Guardians of Justice v. Richmond*, C-75-0439-SW. N.D. Cal., filed March 5, 1975.) That case is currently in discovery, and no trial date has been set.

It is my understanding that the Richmond Police Department has received more than one million dollars in the past few years in LEAA funds. Given the Department's discriminatory practices, I believe their continuing receipt of any LEAA monies to be unlawful.

Therefore, I hereby request you to initiate a thorough investigation of the racially discriminatory employment practices of the Richmond Police Department and to initiate administrative proceedings to suspend all LEAA funding to the Richmond Police Department.

Sincerely,

SGT. OLLIE S. GLOVER

OLG:sd

CC: The Hon. RONALD V. DELLUMS, Congressman
1417 Longworth Building
Washington, D.C. 20515

GLOVER AFFIDAVIT
EXHIBIT B

UNITED STATES DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE
ADMINISTRATION
WASHINGTON, D.C. 20531

August 22, 1975

Sgt. Ollie S. Glover
4846 State Court
Richmond, California 94804

Re: 76-C-007

Dear Sgt. Glover:

We are in receipt of your complaint alleging racial discrimination in the employment practices of the Richmond, California Police Department. We are docketing your complaint with Docket No. 76-C-007. Please refer to this number in all future correspondence.

However, you have also advised that similar issues have been raised in the case of *The Guardians of Justice v. Richmond*, C-75-0439-SW, N.D. Cal.

We take administrative notice of the pending litigation and will defer assertion of jurisdiction over the similar subject matter until there has been a judicial resolution of the matter, at which time we will review that resolution to determine whether or not it would be appropriate to consider the matter further.

We will appreciate it if you will keep us advised of the progress of the litigation.

Sincerely,

/s/_____
HERBERT C. RICE, DIRECTOR
Office of Civil Rights Compliance

By:

/s/_____
WINIFRED A. DUNTON, ATTORNEY-ADVISOR
Office of Civil Rights Compliance

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75-1444

NATIONAL BLACK POLICE ASSOCIATION, INC., ET AL.,
PLAINTIFFS

-v-

RICHARD W. VELDE, ET AL.,
DEFENDANTS

MOTION TO DISMISS OR FOR SUMMARY JUDGMENT

Defendants, by their attorney, the United States Attorney for the District of Columbia, respectfully move the Court as follows:

I. As to plaintiffs' claims against defendants in their official capacity:

A. To dismiss this action because there is an adequate remedy in lawsuits brought directly against the police departments claimed to discriminate.

B. To dismiss this action because plaintiffs lack standing, the matter is not justifiable and there is no basis for intervention by an equity court.

C. To dismiss this action because indispensable parties have not been joined.

D. Alternatively, to grant summary judgment in favor of defendants on the ground that there is a rational basis for the manner in which defendants have proceeded in seeking to carry out the civil rights compliance responsibilities of the Law Enforcement Assistance Administration.

II. As to plaintiffs' claims against defendants for twenty million dollars in their individual capacity:

A. To dismiss this action for failure to state a claim upon which relief can be granted.

B. To dismiss this action or grant summary judgment in favor of defendants on the ground that it is barred by the doctrine of official immunity, in that the actions taken by defendants were within the outer perimeter of defendants' line of duty.

In support of this motion there are filed:

"Statement of Reasons—Explanation of LEAA's Role and Activity in Civil Rights Compliance" of Richard W. Velde, Administrator, Law Enforcement Assistance Administration, with Appendix and Attachments.

Affidavits of Edward H. Levi, Attorney General of the United States; Richard W. Velde; Charles R. Work, formerly Deputy Administrator for Administration, Law Enforcement Assistance Administration; Herbert C. Rice, Director, Office of Civil Rights Compliance, Law Enforcement Assistance Administration.

Statement of Material Facts

Memorandum of Points and Authorities

EARL J. SILBERT
United States Attorney

ROBERT N. FORD
Assistant United States Attorney

JOHN M. KELSON
Attorney
Department of Justice

NATHAN DODELL
Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75-1444

NATIONAL BLACK POLICE ASSOCIATION, ET AL.
PLAINTIFF

v.

RICHARD W. VELDE, ET AL.
DEFENDANTS

AFFIDAVIT OF RICHARD W. VELDE

Washington, D.C.)
) ss.
District of Columbia)

I, RICHARD W. VELDE, being duly sworn, depose and say:

1. I, RICHARD W. VELDE, am a named defendant in the instant action. I have read the amended complaint in this action.

2. From March 1969 until August 1973 I served as Associate Administrator of the Law Enforcement Assistance Administration (LEAA). After a statutory restructuring of the Administration, I assumed the position of Deputy Administrator for Policy Development in August 1973. I remained in that capacity until I was officially sworn in as Administrator on September 5, 1974, and have served as Administrator to the present.

3. As the Deputy Administrator for Policy Development, I had no delegated civil rights authority or responsibility. My views were requested concerning policy questions in various areas, which may have included the civil rights area, although I don't recall any specific instance.

4. Upon assuming the position of Administrator, I took the initiative to make the civil rights compliance program of LEAA even more effective. As the Administrator, I am not

involved in the day-to-day civil rights compliance activities of the agency. The Director of the Office of Civil Rights Compliance has been delegated the authority and responsibility for insuring that recipients of LEAA funds comply with applicable civil rights laws, statutes, orders, rules and regulations. (Attachment 1—Delegation of Authority.) I am responsible for establishing the basic policy and direction that LEAA will pursue in meeting its civil rights obligations. In doing so, I operate under the general authority of the Attorney General. I have described in great detail the policy and direction of LEAA in the area of civil rights compliance activities in the accompanying Statement of Reasons. This affidavit essentially highlights those activities described in the Statement that relate to my personal involvement as Administrator.

5. My decision to strengthen the compliance program was officially communicated in my Statement of Priorities issued on September 9, 1974, in which I stated that in order to make the block grant approach work "[LEAA] will insist upon full State and local compliance with the applicable civil rights and equal employment opportunity program statutes".

6. I directed that a policy development seminar on civil rights compliance be convened. Approximately 40 experts in the area of civil rights, affirmative action and criminal justice were invited to Meadowbrook Hall in Rochester, Michigan on February 10 and 11, 1975, to make presentations and discuss ways of improving the compliance programs. There were three areas which were prominent on the Conference agenda. First, as there had been considerable confusion as to the best enforcement techniques to insure compliance with the civil rights provisions of the Omnibus Crime Control and Safe Streets Act, it appeared that it would be beneficial to give different experts in the area an opportunity to be heard on the subject. The issue of preselection instruments for screening applicants was discussed comprehensively. Finally, as sex discrimination in law enforcement is a particularly relevant issue, it also was extensively discussed.

Regarding the utilization of women in police service, which in response to a letter of inquiry from Congressman Rangel I had indicated to be a "novel question," at the Meadowbrook Hall Conference, I further stated:

> "[T]he point I was trying to make in the letter to Congressman Rangel was that the provisions of our law with respect to sex discrimination have not yet been significantly litigated in the courts as to the full extent of their meaning (congressional intent, and so on) and not that we weren't concerned with enforcing the provisions until we received directives from the courts. As you know, the entire history of civil rights legislation, its implementation and litigation, is that you don't understand and appreciate the full dimensions of a provision you have on the books until it is tested in the courts and you find out just what is there and what is not. That was my point in the letter, and not that we are going to sit back and wait for the courts to tell us what to do, that is not the case." (Transcript of Meadowbrook Hall Conference and List of Attendees— Attachment 2.)

7. As a direct result of the discussions and recommendations of the Meadowbrook Hall Conference, I directed the Office of Civil Rights Compliance to develop a Master Plan and Statement of Priorities. This plan examines the principal problems encountered by LEAA in the implementation of its compliance program and suggests ways in which the compliance program may be strengthened, given a better identification and utilization of resources available at the Federal, State and local level to approach the enforcement of civil rights compliance obligations of LEAA's criminal justice constituency. The Master Plan was circulated for comment among prominent blacks in the criminal justice community as well as the Civil Rights Commission, the Hispanic Criminal Justice Task Force, the International Association of Chiefs of Police, the Equal Employment Opportunity Commission, the Department of Labor, the National League of Cities, the Police Foundation, the American Bar Association, the National Urban League, and the Women's Equity Action League. The Master Plan will be issued in final in February 1976.

8. I was invited to address the Second Annual Conference on Blacks and the Criminal Justice System held on February 5, 1975. I stated before this body that:

> "One of my priorities as Administrator to strengthen the LEAA operations is an emphasis on the enforcement of civil rights compliance responsibilities by LEAA recipients. During the weeks and months ahead, LEAA will work to assure full compliance with the civil rights laws."

9. Based on the recommendations of black leaders in the criminal justice field, I authorized the position of Special Assistant to the Administrator on Women and Minority Rights. The position is located on my immediate staff and the Special Assistant (GS–15 level) directs, provides leadership and coordinates the efforts of LEAA and its staff in the area of minority and women's rights and in this capacity serves as my confidential consultant. The Special Assistant serves as my personal representative in consultation with various State and national groups and provides guidance and advice on the development of pertinent programs applicable to civil rights statutes, rules and regulations for law enforcement programs, grants and contracts. I have chosen an extremely qualified individual, Mr. Lewis Taylor, for this position. On December 22, 1975, Mr. Taylor assumed this position. For a period of time prior to that date, Mr. Reynaldo Maduro had been acting in that capacity. Mr. Maduro is the Director of the LEAA Executive Secretariat and was formerly Executive Director of the Cabinet Committee on Opportunities for Spanish-Speaking People.

10. On February 18, 1975, LEAA sponsored a conference at my direction with numerous prominent blacks in the criminal justice area and those blacks with an interest in the criminal justice area. Also in attendance for part of the conference was Edward H. Levi, Attorney General of the United States. The purpose of the meeting was to assure that the policy and program directions of LEAA most accurately reflected the relevant needs and concerns of black citizens that come in contact with the criminal justice system. A steering committee was established by the participants of the conference which met through May. I met with

the committee on May 16, 1975, and a number of recommendations were discussed. I received a letter from Lee P. Brown, Coordinator of the Steering Committee, which outlined the items discussed by the committee and stated that:

> "On behalf of the Steering Committee on Blacks and the Criminal Justice System, I thank you for the personal interest you have taken in the problems of Blacks and Criminal Justice. We are encouraged by your efforts in this area.
>
> "Also, the members of the Steering Committee felt that the meeting with you on May 16, 1975 was very productive. We feel that your response to our suggestions and recommendations made the time we have been devoting to this concern well worthwhile. Hopefully, by working together, we will achieve results that will benefit all citizens."

11. In a letter dated July 28, 1975, I informed Mr. Brown of the status of the recommendations that the Steering Committee had made. I expressed my support of a ten- to fifteen-member committee as an advisory body to LEAA relative to minority issues. I stated that I would give serious consideration to the nominees submitted by the Steering Committee but that I have the option to consider other appropriate nominees to insure broad minority representation. The actual coordination and establishment of the advisory committee is one of the functions of my new Special Assistant.

I also agreed with the need to involve minority firms with LEAA contracts and in furtherance of that goal reported:

> "By agreement with the Small Business Administration, the Agency has permission to negotiate with an 8-A firm thereby eliminating the required procedure of submitting a response to a request for a proposal."

12. Due to LEAA's involvement in the civil rights area, I was invited to the White House, along with Deputy Administrator Charles Work and Office of Civil Rights Compliance Director Herbert Rice, on April 15, 1975, to meet with 75 black civic leaders from across the Nation to dis-

cuss law enforcement problems relating directly to blacks. Those black leaders in attendance included several black law enforcement officials, attorneys, judges, and officials of civic and service organizations. A strong and effective civil rights compliance program was enunciated as an important LEAA priority to help insure total community involvement.

13. OCRC is now working toward enhancing the State's capacity to deal with civil rights compliance thereby increasing the resources available in this area. On January 21, 1976, guidelines became effective setting up a system for complaint processing in which State and local agencies are actively involved. Additional objectives of OCRC include increasing the number of EEOP audits, prebid conferences, audit of construction contracts to assess and assure contractor's compliance with required civil rights assurances, and to increase and improve technical assistance afforded criminal justice agencies to improve their understanding of civil rights issues.

14. I have proposed amended equal employment regulations removing the stated preference for judicial enforcement procedures, 40 Fed. Reg. 5654, December 3, 1975.

15. Although I am not involved with the daily operations of OCRC, occasionally I am called upon to take action on pending cases.

16. On August 26, 1975, after being apprised of the utilization of a discriminatory minimum height rquirement of the Honolulu Police Department and the failure of voluntary compliance efforts, I sent a letter to Governor George R. Ariyoshi of Hawaii, notify him of the discriminatory practice and the inability to achieve compliance through voluntary means. I warned that failure to resolve this matter will result in the institution of appropriate legal proceedings to enforce compliance.

Governor Ariyoshi responded on September 26, 1975, that substantial efforts and significant progress were being made by Honolulu officials. A letter dated September 29, 1975, was sent by the Civil Service Director of Honolulu to

the Honolulu Chief of Police (with LEAA also being sent a copy) stating that:

> "This is to inform you that we have deleted the height requirement from the minimum qualifications standards for all entry level police officers and police matron classes, effective September 29, 1975."

17. In February 1975 I was made aware of a non-compliance matter involving the Police Department of St. Louis in which I was prepared to take enforcement action. In that matter, officials in St. Louis, upon learning that they faced the prospect of such action by LEAA, voluntarily complied, obviating the necessity of taking enforcement action.

18. In mid-January 1975, I was apprised of the fact that the cities of Pittsburgh and McKeesport had failed to complete an Equal Employment Opportunity (EEO) plan covering the local Police Departments as required. Cornelius M. Cooper, Regional Administrator of LEAA, located in Philadelphia, wrote to John Snavely, the Executive Director of the Pennsylvania State planning agency, on January 24, 1975, directing that the State planning agency not award any further subgrants to those cities until compliance with the EEO Guidelines was achieved. The action was done with my knowledge and support. The cities of McKeesport and Pittsburgh have now submitted satisfactory EEO plans.

19. On January 29, 1976, I sent a letter to the Governor of Pennsylvania advising him of the non-compliance of the Philadelphia Police Department and requesting his assistance in securing such compliance. If the Governor cannot secure compliance by March 29, 1976, LEAA will initiate fund-termination proceedings pursuant to § 509 of the Crime Control Act.

20. On January 16, 1976, I sent a letter to the Governor of South Carolina notifying him of the non-compliance of the South Carolina Highway Patrol. The Governor was given until March 1, 1976, to try to secure compliance. If voluntary efforts fail to resolve the situation, LEAA will initi-

ate fund-termination proceedings pursuant to § 509 of the Crime Control Act.

21. In my capacity as Administrator, I have authorized numerous discretionary and technical assistance grants to enhance minority opportunities and involvement with law enforcement and criminal justice activities. Discretionary grants, which are available to units of local government, are dispensed directly by LEAA to approved applicants. These funds are viewed as a means by which the LEAA can advance priorities and provide special emphasis for reform and experimentation with the total law enforcement structure. Technical assistance has been rendered to improve the understanding of criminal justice agencies of civil rights issues and to facilitate the development of procedures which may adequately reflect community needs. (Attachment 3).

22. My actions as described above and further presented in my Statement of Reasons were fully in the discharge of my official duties and responsibilities as Administrator. Furthermore, in addition to my knowledge of the actions of Charles R. Work and Herbert C. Rice as their superior, I have reviewed their affidavits and have determined that their actions were fully in the discharge of their official duties and responsibilities.

/s/ _____
RICHARD W. VELDE

Subscribed and sworn to before me this 6th day of February 1976.

/s/ _____
RENE F. KELLY
Notary Public

My Commission expires Feb. 14, 1978.

VELDE AFFIDAVIT
Attachment 1

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

INSTRUCTION

October 31, 1974

Subject: DELEGATION OF AUTHORITY TO THE DIRECTOR, OFFICE OF CIVIL RIGHTS COMPLIANCE (OCRC)

1. *PURPOSE.* The purpose of this Instruction is to delegate the authority for the administration and operation of the Office of Civil Rights Compliance to its Director.

2. *SCOPE.* This Instruction is of interest to all LEAA personnel.

3. *CANCELLATION.* This Instruction cancels LEAA Instruction I 1310.24 dated March 18, 1974.

4. *FUNCTIONAL DELEGATION.* The Director, Civil Rights Compliance is delegated the authority and responsibility for ensuring that recipients of LEAA funds comply with applicable civil rights laws, statutes, orders, rules and regulations.

a. *Regulations.* Develop regulations to ensure compliance with civil rights requirements of the LEAA program by recipients of LEAA funds.

b. *Directives and Guidelines.* Develop directives to ensure compliance with civil rights requirements of the LEAA program by recipients of LEAA funds.

c. *Technical Assistance.* Consult with the Office of National Priority Program on methods to provide technical assistance to recipients of LEAA funds for the development of ways and means to assure compliance with civil rights regulations and statutes.

d. *Representation.* Ensure that efforts for the enforcement of nondiscrimination requirements in federal programs are coordinated with other federal agencies including the development of programs for the collection, analysis and use of report data and information to ascertain compli-

ance with civil rights requirements. Coordinate civil rights compliance efforts to ensure full utilization of state and local resources.

e. *Audits, Examinations and Investigations.* Conduct inspections, investigations and reviews as required to ensure compliance with civil rights requirements and to gather facts about alleged civil rights violations. In reference to audits, leads will be referred to OCRC by the Office of Inspector General for followup actions.

f. *Negotiations and Sanctions.* Conduct negotiations with recipients of LEAA funds, where necessary, to achieve voluntary compliance and recommend, in consultation with the General Counsel, the application of sanctions, if necessary.

g. *Case Preparation.* Assist the LEAA General Counsel and the divisions of the Department of Justice in the preparation of civil rights compliance cases involving recipients of LEAA funds.

h. *Grants and Program Management.* Subject to the policy direction, allocation of funds and directives issued by the Administration, the Director of OCRC is delegated the authority to administer, modify, (not to exceed the original dollar amount of the approved award) extend, terminate, monitor and evaluate grants and agreements within the program areas of assigned responsibility. In this respect, grants may be extended for up to 12 months; however, the total period of award for any grant may not exceed 24 months.

REDELEGATION. Authority delegated in this Instruction may be redelegated, in whole or in part, provided that any redelegation is in writing and approved by the Administrator. This restriction does not apply to temporary redelegation of authority to a deputy or an assistant to be exercised during the Director's absence. Authority redelegated by the Director shall be exercised subject to the Director's policy direction and coordination and under such restrictions deemed appropriate.

RECORDS. The Office of Civil Rights Compliance shall keep such records concerning the delegations in paragraph 4 as the Assistant Administrator, Office of Operations Sup-

port and the Comptroller shall require. These records shall be forwarded to these offices as required.

/s/
RICHARD W. VELDE
Administrator

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75-1444

NATIONAL BLACK POLICE ASSOCIATION, INC., ET AL., PLAINTIFFS,

v.

RICHARD W. VELDE, ET AL., DEFENDANTS.

AFFIDAVITS

WASHINGTON, D.C.)
) ss.
DISTRICT OF COLUMBIA)

I, Edward H. Levi, being duly sworn, hereby depose and say:

1. I am the Attorney General of the United States and have held this position since taking the oath of office on February 6, 1975.

2. I have reviewed the Amended Complaint in the above-styled action.

3. As Attorney General, I have vested in me by virtue of Title I, Section 101(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (the "Act"), as amended, 42 U.S.C. § 3711, certain powers and duties relating to the Law Enforcement Assistance Administration (the "Administration").

4. Section 101(a) of the Act provides that the Administration "is hereby established within the Department of Justice, under the general authority of the Attorney General." This provision, as construed in consonance with the Act's legislative history by past Attorneys General, empowers the Attorney General to exercise powers of general policy guidance, budgetary review, and regulatory supervision without the Attorney General ordinarily involving him-

self in the details of the Administration's grant-making process. See memorandum dated June 26, 1968, prepared by the Assistant Attorney General of the Office of Legal Counsel. [Attachment 1 hereto.] Nor does the Attorney General exercise day-to-day supervision over the operations of the Administration. See memorandum dated September 19, 1973, prepared by the Assistant Attorney General of the Office of Legal Counsel [Attachment 2 hereto.] As stated by former Assistant Attorney General Dixon: "The language and legislative history of Section 101 of the Omnibus Crime Control and Safe Sreets Act clearly indicates that the Administration was [not] to be . . . under the same direct supervision and control as are other Divisions in the Department of Justice." *Id.*, pp. 6–7.

5. In the exercise of powers of general policy guidance and regulatory supervision, past Attorneys General, in conjunction with the Administration, have issued regulations expressing the principle that no recipient of federal funding, including "law enforcement agencies," extended by the Department of Justice under the Act, "shall discrimiante in its employment practices against employees or applicants for employment because of race, color, creed, sex, or national origin." 28 C.F.R. § 42.203.

6. The applicable regulations provide that recipients, applying for assistance under the Act, must include assurances in their applications that they will comply with the Department's requirements prohibiting discriminatory employment practices. 28 C.F.R. § 42.204(a)(1). Failure to comply with these assurances may result, after opportunity for hearing, in the termination of federal assistance to the recipient. 28 C.F.R. §§ 42.101, *et seq.*

7. However, neither the Act nor policy of the Department of Justice encourages the termination of federal assistance without recourse to voluntary means. 42 U.S.C. § 3766(c)(2); 28 C.F.R. § 42.108(c). In fact, as a precondition to the termination of federal assistance under the Act, efforts at securing voluntary compliance by the recipient must have failed before resort to this sanction may be had. *Id.*

8. As part of the Jutice Department's efforts to secure civil rights compliance where there are allegations of discriminatory employment practices, the Civil Rights Division of the Department has commenced litigation where deemed appropriate, *e.g.*, in suits against the City of Chicago, the City of Philadelphia, the State of New Jersey (New Jersey State Police), the State of Michigan (Michigan State Police), and the State of North Caolina (North Carolina State Police). [See Atachment 3 hereto.]

9. I have reviewed the affidavits of Richard W. Velde, Charles R. Work, and Herbert Rice together with the Statement of Reasons signed by Mr. Velde and have concluded that the actions taken by defendants Velde, Work and Rice as described therein were taken by them well within their official duties and responsibilities.

/s/ _____
EDWARD H. LEVI

Subscribed and sworn to before me this 9th day of February 1976.

/s/ _____
AUDREY J. WILLIAMS
Notary Public

My commission expires March 11,1979

Attachments 1 and 2 are omitted

LEVI AFFIDAVIT

Attachment 3

Representative of the cases brought by the Department of Justice against, *inter alia*, law enforcement agencies on the basis of alleged discriminatory employment practices are the following:

(1) *United States* v. *the City of Miami, Florida, et al.*, U.S.D.C. S.D.Fla., Civil Action No. 75–3096–Civ–JE;

(2) *United States* v. *State of North Carolina, et al.*, U.S.D.C. E.D.N.C., Civil Action No. 75–0328–Civ5;

(3) *United States* v. *State of New Jersey, et al.*, U.S.D.C. D.N.J., Civil Action No. 75–1734;

(4) *United States* v. *State of Michigan, et al.* U.S.D.C. W.D.Mich., Civil Action No. G75–472;

(5) *United States* v. *County of Hawaii, et al.*, U.S.D.C. D.Hawaii, Civil Action No. 75–0291;

(6) *United States* v. *Pima County, et al.*, U.S.D.C. D.Ariz., Civil Action No.75–195;

(7) *United States* v. *City of Wichita Falls, Texas, et al.*, U.S.D.C. N.D. Texas, Civil Action No. 7–75–31;

(8) *United States* v. *Jefferson County, et al.*, U.S.D.C. N.D.Ala., Civil Action No. 75–P–06665;

(9) *United States* v. *the City of Tallahassee, Florida, et al.*, U.S.D.C. N.D.Fla., Civil Action No. TCA 74–209;

(10) *United States* v. *City of Milwaukee, et al.*, U.S.D.C. E.D.Wisc., Civil Action No. 74–C–480;

(11) *United States* v. *City of Memphis, et al.*, U.S.D.C. W.D.Tenn., Civil Action No. C–74–286;

(12) *United States* v. *The City of Philadelphia, et al.*, U.S.D.C. E.D.Pa., Civil Action No. 74–400;

(13) *United States* v. *State of Maryland, et al.*, U.S.D.C. D.Md., Civil Action No. 74–8;

(14) *United States* v. *City of Chicago, et al.* U.S.D.C. N.D.Ill., Civil Action No. 73 C–2080;

(15) *United States* v. *City of Buffalo, et al.*, U.S.D.C. W.D.N.Y., Civil Action No. 1973–414; and

(16) *United States* v. *City of Montgomery, Alabama, et al.*, U.S.D.C. M.D.Ala., Civil Action No. 3739–N.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75–1444

NATIONAL BLACK POLICE ASSOCIATION, ET AL.
PLAINTIFFS,

v.

RICHARD W. VELDE, ET AL.
DEFENDANTS

AFFIDAVIT OF CHARLES R. WORK

Washington, D.C.)
) ss.
District of Columbia)

I, CHARLES R. WORK, being duly sworn, depose and say:

1. I, CHARLES R. WORK, am named as party defendant in the above-entitled action. I have read the amended complaint filed in this action, and I am familiar with the allegations contained therein.

2. From November 2, 1973, until November 21, 1975, I served as Deputy Administrator for Administration of the Law Enforcement Assistance Administration. On November 21, 1975, I resigned this position and entered into the private practice of law. On January 2, 1976, the date of the filing of the amended complaint, I was no longer affiliated with LEAA.

3. In my position as Deputy Administrator for Administration I had certain delegated authority. This authority involved taking final action on internal LEAA administrative management matters including: personnel management, audits, internal fiscal and financial management, procurement of goods and services and property and records management. (Attachments A, B, C, and D.)

4. While I did not have any delegated authority in the day-to-day operations of LEAA's civil rights program, certain of my activities did involve me in a limited way in the civil rights area, and during the time from November, 1973 until September, 1974 when Donald Santarelli was Administrator, all the office heads, including Herbert C. Rice, reported to me periodically with respect to operations questions. Policy questions were referred to and discussed with the Administrator and the Deputy Administrator for Policy Development.

5. It was my responsibility to maintain liaison with the State Planning Agency Directors. I favored and encouraged broadening the role of the State planning agencies in the civil rights investigation and enforcement area.

6. On August 19, 1974, I reviewed and signed a guideline concerning representation of minorities and women on supervisory boards of criminal justice State planning agencies and regional planning units. The guideline required that no individual on the basis of race, color, sex or national origin be denied appointment or selection to serve on supervisory boards of State planning agencies or regional planning units existing pursuant to Section 203(a) of the Crime Control Act of 1973.

7. I maintained liaison with John Calhoun of the President's staff on minority affairs in preparation for the April 15, 1975, conference with black leaders to discuss law enforcement problems related directly to blacks. I attended that conference along with Administrator Richard W. Velde and Herbert C. Rice, Director, Office of Civil Rights Compliance.

8. On February 18, 1975, I participated in a "Conference on Black Citizens and Criminal Justice." This meeting, attended by representatives of various community and civil rights groups throughout the nation, was designed to help officials at LEAA work with community representatives in an effort to improve LEAA's programs with respect to involving minority groups in criminal justice, facilitating police-community relations, and enhancing the civil rights compliance programs. As I stressed to the participants of

the conference we wanted to get their ideas about how we could operate our program even more effectively.

9. I had no regular direct contact with the day to day operations of the Office of Civil Rights Compliance. I therefore had no involvement with the named plaintiffs except for Penelope Brace. In January 1974 I was asked to take certain action to insure that Officer Brace would not be suspended without pay from her job. The issue, as presented to me, was a question of retaliation because Officer Brace had filed a complaint of discrimination. Because I knew Stanley Pottinger, Assistant Attorney General, Civil Rights Division, I was asked by the Office of General Counsel on an emergency basis to advise Mr. Pottinger of the Philadelphia Police Department's activities. I placed a telephone call to Mr. Pottinger to request the Department of Justice's immediate action to insure that Officer Brace would not be dismissed. Given the situation at the time, it was my opinion that immediate resort to the courts was the only action to be taken to keep Ms. Brace from being terminated from the police department.

10. Because of my initial involvement in this matter, I was kept apprised of this particular situation.

In June 1974, I signed a letter to Mr. Hillel Levinson, Managing Director of the City of Philadelphia, in response to a letter from him regarding the city's request for continuation of two $1,000,000 crime reduction grants. The purpose of my letter was to inform them that they would not receive approval of these grants until we were assured that Ms. Brace was permanently restored to duty and would not be retaliated against. The letter stated that final approval of these grants was being considered in the context of satisfactory progress in the litigation concerning Officer Brace. It also stated that I hoped that Mr. Levinson would impress upon the City Solicitor's Office the importance of moving quickly toward a resolution of the case. It is my understanding that Officer Brace was ordered restored to duty. The two grants in question were not awarded by the LEAA Philadelphia Regional Office until the following year.

11. To my best recollection and belief, I had no further role in any specific civil rights action. I felt then, as I do now, that LEAA has a positive and aggressive civil rights program; and I often said that I wanted LEAA to have the best civil rights program in the federal government. I have worked for and spoken in support of civil rights for minority groups and women. As Deputy Administrator for Administration, I acted fully in the discharge of my official duties and responsibilities. The accusation that I did otherwise is completely untrue and unfair.

CHARLES R. WORK

Subscribed and sworn to before
me this 30 day of January 1976.

BEVERLY JEAN LEWIS
Notary Public

My Commission expires: 1-1-80

WORK AFFIDAVIT
Attachment

UNITED STATES
DEPARTMENT OF JUSTICE

LAW ENFORCEMENT
ASSISTANCE ADMINISTRATION

Instruction

November 21, 1973

Subject: DELEGATION OF AUTHORITY TO DEPUTY ADMINISTRATOR FOR ADMINISTRATION

1. *PURPOSE*. The purpose of this Instruction is to delegate to the Deputy Administrator for Administration the authority to take final action on all administrative management matters vested in the Administrator pursuant to Section 101 of the Crime Control Act of 1973.

2. *SCOPE*. This Instruction is of interest to all LEAA personnel.

3. *DEFINITION*. For the purposes of this Instruction, this authority includes, but is not limited to, personnel management, audits, internal fiscal and financial management, procurement of goods and services, property and records management. This Instruction does not rescind or amend those delegations for day to day operations in the administrative management area previously authorized and in effect at this time except to the extent that they may be inconsistent with the provisions hereof.

4. *DELEGATION*. The Deputy Administrator for Administration is delegated the authority and responsibility for the administrative management of LEAA. He is authorized to sign all letters, documents, and records related to these activities.

/s/_____
DONALD E. SANTARELLI
Administrator

WORK AFFIDAVIT
Attachment

UNITED STATES
DEPARTMENT OF JUSTICE

LAW ENFORCEMENT
ASSISTANCE ADMINISTRATION

Instruction

September 9, 1974

Subject: DELEGATION OF AUTHORITY TO DEPUTY ADMINISTRATOR FOR ADMINISTRATION

1. *PURPOSE*. The purpose of this Instruction is to delegate authority to the Deputy Administrator for Administration.

2. *SCOPE*. This Instruction is of interest to all LEAA personnel.

3. *CANCELLATION*. This Instruction cancels LEAA Instruction I 1310.16, Delegation of Authority to Deputy Administrator for Administration, dated November 21, 1973.

4. *DEFINITION*.

a. *For the purposes of this Instruction*, administrative management includes, but is not limited to:

(1) Personnel management,

(2) Audits,

(3) Internal fiscal and financial managements,

(4) Procurement of goods and services, and

(5) Property and records management.

b. *This Instruction* does not rescind or amend those delegations for day to day operations in the administrative management area previously authorized and in effect at this time except to the extent that they are inconsistent with this Instruction.

5. *ACTION.*

a. *The Deputy Administrator for Administration* is delegated the authority to take final action on all LEAA administrative management matters except for personnel management.

b. *The Deputy Administrator for Administration* is delegated the authority to take final action on all LEAA personnel management matters except in regard to Central Office Heads, Regional Administrators, and GS 16 positions and above.

c. *The Deputy Administrator for Administration* is delegated the authority to sign all letters, documents, and records relating to the administrative management matters delegated in this Instruction.

6. *REDELEGATION.* The Deputy Administrator for Administration is authorized to redelegate, in whole or in part, the authority delegated in this Instruction provided the redelegation is in writing and approved by the Administrator.

/s/_____

RICHARD W. VELDE
Administrator

WORK AFFIDAVIT
Attachment

UNITED STATES
DEPARTMENT OF JUSTICE

LAW ENFORCEMENT
ASSISTANCE ADMINISTRATION

Instruction

January 14, 1975

Subject: DELEGATION OF AUTHORITY TO DEPUTY ADMINISTRATOR FOR ADMINISTRATION

1. *PURPOSE*. The purpose of this Instruction is to delegate authority to the Deputy Administrator for Administration.

2. *SCOPE*. This Instruction is of interest to all LEAA personnel.

3. *CANCELLATION*. This Instruction cancels LEAA Instruction I 1310.16A, Delegation of Authority to Deputy Administrator for Administration, dated September 9, 1974.

4. *DEFINITION*.

a. *For the purpose of this Instruction*, administrative management includes but is not limited to:

(1) Personnel management,

(2) Audits,

(3) Internal fiscal and financial managements,

(4) Procurement of goods and services, and

(5) Property and records management.

b. *This Instruction* does not rescind or amend those delegations for day to day operations in the administrative management area previously authorized and in effect at this time except to the extent that they are inconsistent with this Instruction.

5. *ACTION.*

a. *The Deputy Administrator for Administration* is delegated the authority to take final action on all LEAA administrative management matters except for personnel management.

b. *The Deputy Administrator for Administration* is delegated the authority to take final action on all LEAA personnel management matters with the following exceptions:

(1) Managerial positions at the Division Chief and the Office Head levels in the Central Offices and Regional Offices, or

(2) GS–16 positions and above.

c. *The Deputy Administrator for Administration* is delegated the authority to sign all letters, documents, and records relating to the administrative management matters delegated in this Instruction.

6. *REDELEGATION.* The Deputy Administrator for Administration is authorized to redelegate, in whole or in part, the authority delegated in this Instruction provided the redelegation is in writing and approved by the Administrator.

/s/_____

RICHARD W. VELDE
Administrator

WORK AFFIDAVIT
Attachment

UNITED STATES
DEPARTMENT OF JUSTICE

LAW ENFORCEMENT
ASSISTANCE ADMINISTRATION

Instruction

August 22, 1975

Subject: DELEGATION OF AUTHORITY TO DEPUTY ADMINISTRATOR FOR ADMINISTRATION

1. *PURPOSE*. The purpose of this Instruction is to delegate authority to the Deputy Administrator for Administration.

2. *SCOPE*. This Instruction is of interest to all LEAA personnel.

3. *CANCELLATION*. This Instruction cancels LEAA Instruction I 1310.16B, Delegation of Authority to Deputy Administrator for Administration, dated January 14, 1975.

4. *DEFINITION*.

a. For the purpose of this Instruction, administrative management includes but is not limited to:

(1) Personnel management,

(2) Audits,

(3) Internal fiscal and financial management,

(4) Procurement of goods and services, and

(5) Property and records management.

b. *This Instruction* does not rescind or amend those delegations for day to day operations in the administrative management area previously authorized and in effect at this time except to the extent that they are inconsistent with this Instruction.

5. *ACTION.*

a. *The Deputy Administrator for Administration* is delegated the authority to take final action on all LEAA administrative management matters except for personnel management.

b. *The Deputy Administrator for Administration* is delegated the authority to take final action on all LEAA personnel management matters with the following exceptions:

(1) Managerial positions at the Division Chief and the Office Head Levels in the Central Offices and Regional Offices, or

(2) GS–16 positions and above.

c. *The Deputy Administrator for Administration* is delegated the authority to sign all letters, documents, and records relating to the administrative management matters delegated in this Instruction.

6. *EXCEPTION. The Deputy Administrator for Administration* is not delegated any authority to participate, either directly or indirectly, in the consideration, award, and administration of any application for LEAA funds submitted directly or indirectly by the District of Columbia Bar or of any contract or grant of LEAA funds made directly or indirectly to the District of Columbia Bar.

7. *REDELEGATION.* The Deputy Administrator for Administration is authorized to redelegate, in whole or in part, the authority delegated in this Instruction provided the redelegation is in writing and approved by the Administrator.

/s/_____

RICHARD W. VELDE
Administrator

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75-1444

NATIONAL BLACK POLICE ASSOCIATION, ET AL.
PLAINTIFFS

v.

RICHARD W. VELDE, ET AL.
DEFENDANTS

AFFIDAVIT OF HERBERT C. RICE

Washington, D.C.)
) ss
District of Columbia)

I, HERBERT C. RICE, being duly sworn, depose and say:

1. I am named as party defendant in this action. I have read the Amended Complaint.

2. I am the Director of the Office of Civil Rights Compliance (OCRC) of the Law Enforcement Assistance Administration and have served in this capacity since May of 1971.

3. OCRC has the responsibility of establishing comprehensive procedures and programs for effective enforcement of civil rights responsibilities of recipients of LEAA financial assistance in accordance with Federal law.

4. I am familiar with the "Statement of Reasons—Explanation of LEAA's Role and Activity in Civil Rights Compliance" of Richard W. Velde, Administrator of LEAA, that is being filed in this action. Because of OCRC's responsibility, the policies which my staff and I have formulated and implemented are dealt with at length in the Statement. It is obvious from the content of the Statement that a number of judgments must be made daily by me both in making policy and in making decisions to carry out policy. Judgments involving the exercise of discretion are made in such areas as determining the content of regulations, in making assessments of whether there is compliance with

law and regulation, and in deciding the appropriate steps to be taken in negotiaton and enforcement of matters relating to compliance with law and regulation.

5. It would be redundant for me to repeat the matters discussed by Administrator Velde in the Statement. Much of the work that was done in drafting and issuing regulations and guidelines was done by me or under my supervision, as was the preparation of the Master Plan and Statement of Priorities, referred to at pages 11–12. OCRC performs the functions described at pages 21 to 37 of the Statement of Reasons. OCRC's activities with regard to the police departments that are the targets of individual plaintiffs are discussed in the Appendix to the Statement of Reasons.

6. The Statement of Reasons describes the growth and structure of OCRC. Pages 21 *ff*. The way OCRC has functioned procedurally is this:

Ordinarily, I am advised of progress in the activities of various operating units of OCRC at weekly staff meetings, through periodic meetings with Division Chiefs and ad hoc memoranda from such Division Chiefs, where specific problems of policy and resolution of matters of specific concern to the office arise.

Similarly, I advise the Administrator of LEAA as to the progress of the office in addressing its responsibilities in periodic meetings and memoranda. Along with other operating managers, problems germane to broad policy of LEAA are discussed at staff meetings.

In interpreting law or policy, I seek the counsel and advice of the Administrator, the General Counsel of LEAA, and LEAA's Office of Planning and Management, as appropriate. During the time that Mr. Santarelli was Administrator, I along with other operating office heads, reported directly to Mr. Work, the then Deputy Administrator for Administration, seeing Mr. Santarelli only when matters of broad policy or difficult problems relating to the resolution of individual cases might have needed to be discussed.

OCRC also develops draft regulations and guidelines, which, in consultation with the Office of General Counsel,

are circulated for appropriate internal and external review and comment, prior to adoption.

7. I have a strong and firm commitment to securing civil rights compliance by recipients of LEAA funding. I believe that the Statement of Reasons, reflecting LEAA and OCRC activities, demonstrates this commitment. I have considered it responsible, appropriate and in keeping with law, regulations, and Department of Justice policy to make meaningful efforts to resolve problems by negotiation before starting proceedings leading to termination of funding. I also have sought to make the most effective use possible of the resources of OCRC in seeking to secure compliance. To carry this out, I have tried to avoid duplication of effort and have attempted to use other resources available in effecting civil rights compliance. These matters are dealt with at length in the Statement of Reasons.

8. In all actions taken by me as recounted in the Statement of Reasons and in all actions that I have taken in relation to the matters alleged in the Amended Complaint, I have acted fully within the scope of my official duties and responsibilities as Director of the Office of Civil Rights Compliance. I have taken all these actions in the belief that they were the best way to effectuate the civil rights provisions of the Crime Control Act and the other civil rights laws and regulations affecting the LEAA program.

HERBERT C. RICE

Sworn to and subscribed before
me this 6th day of February 1976.

ROSE L KELLY
Notary Public

My Commission expires: Feb. 14, 1978

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75–1444

NATIONAL BLACK POLICE ASSOCIATION, ET AL.
PLAINTIFFS

v.

RICHARD W. VELDE, ET AL.
DEFENDANTS

STATEMENT OF REASONS

Explanation of LEAA's Role and Activity in Civil Rights Compliance

TABLE OF CONTENTS

		Page
Introduction		1
I.	The Establishment and Purposes of LEAA	2
	A. Policy	2
	B. Procedure	3
II.	LEAA's Civil Rights Activities—A General Statement	8
III.	LEAA's Civil Rights Activities—A Further Statement	17
	A. Preface	17
	B. The Office of Civil Rights Compliance	21
	1. Conduct of Compliance Reviews	23
	2. Equal Employment Opportunity Program Audits	25
	3. Survey	26
	4. Pre-Award Compliance Review Program	26
	5. Compliance in Federally-Assisted Construction Contracts	27
	6. Technical Assistance Grants and Contracts	29
	7. Resolution of Complaints	31
	8. Negotiation and Enforcement	34

IV. Methods—Practical, impractical, appropriate and inappropriate 38
A. Plaintiffs' Proposals 38
B. Additional Reflections 45
Appendix

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action Number 75–1444

NATIONAL BLACK POLICE ASSOCIATION, ET AL.,
PLAINTIFFS,

v.

RICHARD W. VELDE, ET AL., DEFENDANTS.

STATEMENT OF REASONS

EXPLANATION OF LEAA'S ROLE AND ACTIVITY IN CIVIL RIGHTS COMPLIANCE

Introduction

This lawsuit calls into question the performance of the Law Enforcement Assistance Administration with regard to its civil rights responsibilities. An explanation of LEAA's performance requires a discussion of: the establishment and purposes of LEAA; LEAA's civil rights activities; and the practicalities of administering a meaningful program of civil rights compliance. In addition, a discussion of the specific situations addressed by plaintiffs is called for. The body of this Statement of Reasons addresses the general issues presented by the lawsuit. Appendices deal with the specific situations.

I. *The Establishment and Purposes of LEAA*

A. *Policy*

Recognition of the marked increase in crime and lawlessness in the early and mid-60's prompted Congress to take necessary measures to meet this crisis situation. The Congressional action resulted in the creation of the Law En-

forcement Assistance Administration established in the Department of Justice under Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (Pub. L. 90–351, 82 Stat. 197, 42 U.S.C. §3701 *et seq.*). As set forth in the preamble of the Crime Control Act, "the high incidence of crime in the United States threatens the peace, security, and general welfare of the Nation and its citizens. To reduce and prevent crime and juvenile delinquency and to insure the greater safety of the people, law enforcement and criminal justice efforts must be better coordinated, intensified, and made more effective at all levels of government."

In furtherance of this declaration, LEAA is to assist States and units of local government in improving and strengthening law enforcement and criminal justice. In the Declaration and Purpose the Congress stated:

> "It is the purpose of this title to (1) encourage States and units of general local government to develop and adopt comprehensive plans based upon their evaluation of State and local problems of law enforcement and criminal justice; (2) authorize grants to States and units of local government in order to improve and strengthen law enforcement and criminal justice; and (3) encourage research and development directed toward the improvement of law enforcement and criminal justice and the development of new methods for the prevention and reduction of crime and the detection, apprehension, and rehabilitation of criminals."

The basic purpose of LEAA is to seek to address the problem that crime presents in our society. The crime problem is in itself a major obstacle in securing liberty to the people of America. As Attorney General Edward H. Levi said in his address to American Bar Association Convention at Montreal on August 13, 1975:

> "For some years the federal government acted as if its abilities in bringing crime under control were limitless. It created expectations in the public that could not be met. Public disappointment provoked, not a reexamination of the basic assumptions of the federal government's efficacy, but rather an increasing em-

phasis on toughness, even vindictiveness against those convicted of crime. This obscured a feature of the crime problem that is important now to reconsider. *Every success in reducing crime—especially street crime people fear most—is a victory for individual liberty so long as the success does not come at the expense of constitutional rights guaranteed criminal defendants. The sense of vindictiveness that intruded upon the discourse about crime led to the misapprehension that prosecuting criminals somehow infringes upon rights rather than protects them.*

"Serious crime rose 18 percent during the first three months of 1975 compared with the same period last year. In 1974 serious crime was up 17 percent, according to the FBI's Uniform Crime Statistics. Increases in the rate of violent street crime have paralleled the total increase. *These sad figures do not begin to measure the effect on individual freedom increasing crime has had. It has affected not only the immediate victims of violence and theft; it has also embedded fear in the minds of countless Americans. Freedom of movement, freedom of association, even the freedom to rest secure in one's own house have been impaired.*

"*Law enforcement is a central part of the protection of human rights.* The sentiments that lead officials to believe it is better to minimize law enforcement in poor and minority group neighborhoods of our cities are at best misguided. A study by the Law Enforcement Assistance Administration of crime in five large cities showed that blacks were nearly twice as likely as whites to be the victims of robbery or burglary. In four of those cities blacks were also more likely than whites to be the victim of violent aggravated assault. *Lack of adequate law enforcement, more so even than lack of other government services, deprives the poor of their right to live a decent life.*" (Emphasis added.)

As another example of the responsibilities of LEAA in meeting the pressing needs of the Nation in fighting crime, LEAA has a significant responsibility for increasing the capacity of State and local agencies to deal constructively with delinquency prevention and juvenile justice. As I said

in a statement of September 9, 1974, in discussing my responsibilities as new LEAA Administrator:

> " . . . Youths commit much of the violent crime and much of the stranger-to-stranger offenses listed in the Federal Bureau of Investigation's index. Although LEAA cannot by itself remedy the problems associated with family dissolution, poverty, undereducation, rootlessness, alienation, unemployment, and racial discrimination, it must face up to the relationship these conditions have to criminal justice and creatively seek workable solutions. This includes coordinating with other Federal, state and local officials as well as with volunteer groups and all others interested in helping the young. Juvenile delinquency is not only a crime-control issue—it is also a matter of our nation's future as a free society."

At a meeting with 75 black civic leaders at the White House on April 15, 1975, I said:

> "LEAA in its efforts to improve criminal justice, is striving to encourage mutual responsibility between citizens and the criminal justice system. That means involving the community—individual citizens, neighborhoods, schools and churches—in crime reduction efforts . . . . "

Accordingly, it is important that LEAA administer its activities in such a way as to do the best job possible in assisting crime fighting and thereby enhancing liberty. LEAA's civil rights compliance efforts are an important part of these activities and LEAA administers civil rights activities, to the extent possible, in a way that will promote rather than interfere with its assignment to help States and localities fight crime.

For example, cutting off funds is not an end in itself: it is a means toward effecting civil rights compliance. Termination of funding in and of itself may not provide equal employment opportunity and eliminate discrimination.*

---

*Indeed termination can have an adverse impact on minorities and women because they may be the most recently hired and therefore hurt by firings and layoffs.

Where voluntary compliance can be accomplished without interfering with funding of the fight against crime, LEAA will seek to do so. We are not dealing with an either–or proposition. LEAA is seeking to effect civil rights compliance and to assist in combating crime.

B. *Procedure*

Pursuant to the Act, LEAA makes annual "block" grants to each of the States for planning and implementing law enforcement programs. The grants are made to State planning agencies which in turn make subgrants to units of local government for criminal justice agencies in the State. LEAA also makes discretionary grants through State planning agencies to criminal justice agencies in the State.

LEAA has made block grants to all the States since Fiscal Year 1969. Funds appropriated by Congress for LEAA's block grants are allocated under Title I of the Crime Control Act in lump sums among the States on the basis of population for distribution and expenditure by the States and cities. The grant funds are used for programs and priorities determined by the States and cities themselves (82 Stat. 190, 202, 42 U.S.C. §3736).

LEAA makes both block planning and action grants. Block planning grants are utilized by the States to establish and maintain the State planning agencies referred to above as well as to fund regional and local planning bodies. The State planning agency is created or designated by the Chief Executive of the State and is subject to his jurisdiction (82 Stat. 199, 42 U.S.C. §3722). Each State planning agency determines needs and priorities for the improvement of law enforcement throughout the entire State and the State planning agency then defines, develops, and correlates programs to improve and strengthen law enforcement for the State and all of the units of local government within the State. All of this material and information is incorporated into a comprehensive State-wide plan which is annually submitted to LEAA for review and approval (82 Stat. 198, 42 U.S.C §3723).

When a State's plan has been reviewed and approved, the State is eligible to receive its allocated block action

grant for that fiscal year. LEAA is required by statute to make block action grants if the State planning agency has an approved comprehensive plan which conforms with the purposes and requirements of the Crime Control Act (82 Stat. 201, 42 U.S.C. §3733) and with rules, regulations, and procedures established by LEAA consistent with the Crime Control Act.

Eighty-five percent of the LEAA action funds are "block" grant monies running directly to the State planning agencies for distribution in accordance with pre-determined State and local priorities. Only 15 percent is then distributed by LEAA directly for national program priority items.

Discretionary funds, which are also available to units of local government under the Act, are dispensed by LEAA to approved applicants. These funds are viewed as a means by which the LEAA can advance national priorities, draw attention to programs not emphasized in State plans, and provide special impetus for reform and experimentation within the total law enforcement structure created by the Act. Discretionary funds represent only a small portion of the aid that will be available to State and local governments and are not intended to meet the massive and widespread need the State plan and block grant action funds must address.

II. *LEAA's Civil Rights Activities—A General Statement*

We at LEAA view as a major priority the implementation of a comprehensive program to enforce the civil rights obligations of recipients of LEAA federal assistance. We further view the civil rights programs and initiatives undertaken by LEAA thus far as having significant impact on the quality of law and justice in America. Those initiatives are discussed in this Statement of Reasons:

In my statement of September 9, 1974, I said:

> "In taking the oath of office I have sworn to defend the United States Constitution and to see that the nation's laws are faithfully executed. And so I shall."

I also said that LEAA "will insist upon full state and local compliance with the applicable civil rights and equal employment opportunity program statutes."

In a Nation in which there are many thousands of criminal justice agencies, it is important to issue regulations and guidelines that will let the agencies know what is required of them in effecting civil rights compliance. In a series of issuances, LEAA has stated such requirements to the agencies.

LEAA has consistently sought to formulate and implement programs aimed at uniform adherence to the compliance requirements of the LEAA program and to maximize the utilization of resources available at the State and local level in addressing these responsibilities.

On New Year's Eve 1970, the Department of Justice issued regulations based on the 14th amendment to the U.S. Constitution prohibiting discrimination in the employment practices of recipients of LEAA funds. Originally prohibiting discrimination on the grounds of race, color, creed, or national origin, these equal employment opportunity regulations were amended on August 9, 1972, to include a prohibition of discrimination because of sex. See 28 C.F.R. §42.201, *et seq.*, Subpart D.

These regulations imposed equal employment opportunity standards on employers in the public sector at the State and local level well over a year before Title VII of the Civil Rights Act of 1964 was amended to prohibit discrimination by such employers.

On March 9, 1973, LEAA promulgated Equal Employment Opportunity Guidelines which require validation of minimum height requirements imposed by criminal justice agencies where they are shown to have an adverse impact on certain minority groups and women. Attachment 1, pp. 116–117.

On August 31, 1973, LEAA published its amended Equal Employment Opportunity Program Guidelines, 28 C.F.R. §42.301 *et seq.*, Subpart E, (first issued March 9, 1973) which require that all recipient agencies which have received at least $25,000 in grants, have fifty or more em-

ployees and have a service population with a minority representation of 3 percent or more are required to formulate, implement, and maintain an Equal Employment Opportunity Pogram (EEOP), relating to employment practices affecting minority persons and women, in accordance with the Guidelines. Attachment 1, pp. 9–14.

These regulations provided the first nationwide affirmative action mechanism for the benefit of minorities and women in public sector employment at the State and local level.

In June 1974, LEAA published a brochure entitled "LEAA and Civil Rights" which was broadly distributed throughout the criminal justice system. Attachment 2.

On July 19, 1974, LEAA published an Instruction entitled Equal Employment Opportunity—Goals and Timetables under Section 518(c) of the Crime Control Act of 1973, with regard to appropriate utilization of goals and timetables to overcome the effects of past discrimination. Attachment 1, pp. 162–174.

All of these regulations and guidelines were collected together, along with other materials germane to federal civil rights law in an Equal Employment Opportunity Program Development Manual. The Manual also describes in detail an appropriate methodology of preparing the Equal Employment Opportunity Programs required by the LEAA Guidelines, supra, Attachment 1. These manuals have been printed and distributed broadly by LEAA to the criminal justice community, civil and human rights agencies, and others having an interest in the implementation of compliance responsibilities incident to the LEAA program. The United States Government Printing Office is now also supplying these manuals.

On September 5, 1974, LEAA published a Guideline regarding the representation of minorities and women on supervisory boards of criminal justice State planning agencies and regional planning units. The failure of the appointing authority to select otherwise qualified minorities and women to serve on these boards may constitute a violation of Ti-

tle VI of the Civil Rights Act of 1964 and Section 518(c) of the Crime Control Act of 1973. Attachment 3.

In furtherance of LEAA's commitment to civil rights compliance, I convened a policy development seminar among people inside and outside of government on February 10 and 11, 1975. Some 40 experts in the area of civil rights, affirmative action and criminal justice were invited to Meadowbrook Hall, Rochester, Michigan to make presentations and discuss ways of improving the compliance program. The seminar considered problems relating to discrimination against women in police service; the impact of pre-selection testing of police officer candidates on minority and female applicants; and the relative efficacy of judicial and administrative proceedings in civil rights cases. I was in attendance during the entire conference. Discussions were spirited, free-wheeling and informative.

In accordance with the goal of improving LEAA's compliance program and as a direct result of the discussion and recommendations of the Meadowbrook Hall Conference, the Office of Civil rights Compliance (OCRC) of LEAA prepared a draft Master Plan and Statement of Priorities. This Plan seeks to examine the principal problems encountered by LEAA in the implementation of its compliance program. It suggests ways in which the compliance program may be strengthened, given a better identification and utilization of resources available at the Federal, State and local level to approach the enforcement of civil rights compliance obligations of LEAA's criminal justice constituency.

A first draft was circulated within LEAA and the Department of Justice. A second draft was circulated inside *and* outside of the government on July 3, 1975. Among those who received copies of the Master Plan and commented were the participants in the Conference on Black Citizens and Criminal Justice with whom I have had considerable contact. Mr. E. Richard Larson, one of the attorneys for plaintiffs in this action, also commented on the draft. By letter of September 4, 1975, to Herbert C. Rice (Attachment 4), Mr. Larson stated, in part:

"I enjoyed reading your Master Plan for Civil Rights

Compliance. I agree with most of it, but I kept wondering why it has taken four years."*

The Master Plan will be issued in final in February 1976.

One immediate outgrowth of the preparation and issuance of the Master Plan is that LEAA has issued proposed regulations which will implement Section 518(c) of the Crime Control Act of 1973, and Section 262 of the Juvenile Justice and Delinquency Prevention Act of 1974. Attachment 5.

Based on the recommendations of black leaders in the criminal justice field, I authorized the position of Special Assistant to the Administrator on Women and Minority Rights. The position is located on my immediate staff and the Special Assistant (GS-15 level) directs, provides leadership and coordinates the efforts of LEAA and its staff in the area of minority and women's rights and in this capacity serves as my confidential consultant. The Special Assistant serves as my personal representative in consultation with various State and national groups and provides guidance and advice on the development of pertinent programs applicable to civil rights statutes, rules and regulations for law enforcement programs, grants and contracts. I have chosen an extremely qualified individual, Mr. Lewis Taylor, for the position, and he was brought on board December 22, 1975. Mr. Reynaldo P. Maduro, Director of the Executive Secretariat, and former Executive Director of the Cabinet Committee on Opportunities for Spanish-Speaking People, served as Acting Special Assistant for a period prior to Mr. Taylor's appointment.

---

*[Footnote added.] The Crime Control Act of 1973, which contains Section 518(c) and Section 509, was enacted August 6, 1973, two years before Mr. Larson's letter, not four. LEAA's initiatives and activities in the area of civil rights compliance began long before the issuance of the master plan. See, e.g., the listing of issuances above at page 9 ff, the discussion below at pages 23 ff, and the Appendices to this Statement of Reasons. The master plan and statement of priorities reflects the lessons of experience as well as comment at the Meadowbrook Conference.

On February 18, 1975, LEAA sponsored a conference at my direction with numerous prominent blacks in the criminal justice area and those blacks with an interest in the criminal justice area. Also in attendance for part of the conference was Edward H. Levi, Attorney General of the United States. The purpose was to assure that the policy and program directions of LEAA most accurately reflected the relevant needs and concerns of black citizens that come in contact with the criminal justice system. A steering committee was established by the participants of the conference which met through May. I met with the committee on May 16, 1975, and a number of recommendations were discussed. I received a letter from Lee P. Brown, Coordinator of the Steering Committee, which outlined the items discussed by the committee and stated that:

> "On behalf of the Steering Committee on Blacks and the Criminal Justice System, I thank you for the personal interest you have taken in the problems of Blacks and Criminal Justice. We are encouraged by your efforts in this area.
>
> "Also, the members of the Steering Committee felt that the meeting with you on May 16, 1975, was very productive.
>
> "We feel that your response to our suggestions and recommendations made the time we have been devoting to this concern well worthwhile. Hopefully, by working together, we will achieve results that will benefit all citizens."

In a letter dated July 28, 1975, I informed Mr. Brown of the status of the recommendations that the Steering Committee had made. I expressed my support of a ten to fifteen member committee as an advisory body to LEAA relative to minority issues. I stated that I would give serious consideration to the nominees submitted by the Steering Committee but that I have the option to consider other appropriate nominees to insure broad minority representation. The actual coordination and establishment of the advisory committee is one of the functions of my new Special Assistant.

Due to LEAA's involvement in the civil rights area, I was invited to the White House, along with Deputy Administrator Charles Work and Office of Civil Rights Compliance director Herbert Rice, on April 15, 1975, to meet with 75 black leaders from across the Nation to discuss law enforcement problems relating directly to blacks. Those black leaders in attendance included several black law enforcement officials, attorneys, judges, and officials of civic and service organizations. A strong and effective civil rights compliance program was enunciated as an important LEAA priority to help insure total community involvement.

At that meeting I said: "Citizens are insisting on equal treatment before the law, they are demanding that constitutional and governmental guarantees be applied evenhandedly." I went on to say:

> "For blacks, that means getting the same treatment afforded to whites when they come into contact with law enforcement and criminal justice. This is not isolated to those instances when an individual is touched by the criminal justice system as a victim, offender, witness, or juror, but also when he or she seeks a professional role in the system. How both blacks and whites are treated in these two aspects is a measure of our society's progress and goes to the heart of criminal justice.
>
> "It would appear that discrimination which channels minority youths into a secondary labor market can also prod them into criminal acts or other illicit activities. Vigorous measures to eliminate such discrimination and reduce economic deprivation is justified by fairness alone. A special urgency is added when one considers that such measures can help the community by reducing crime."

While OCRC is the principal arm for the enforcement of LEAA's civil rights responsibility, compliance activity is also performed by the Office of Inspector General of LEAA in the performance of routine audits of grantees to ensure compliance with the Crime Control Act and other appropriate legislation.

Basically, the Office of Inspector General is concerned with auditing at the State planning agency level. However, in the conduct of a routine audit it does randomly select various subgrantees for examination. In the past, there have included a number of local police departments. Due to the complexity of civil rights laws and requirements, the Office of Inspector General has recently adopted a policy of referring findings of non-compliance to OCRC for action. A noteworthy example of the coordinated effort occurred recently with the Detroit Police Department. The Office of Inspector General discovered in an audit of the Michigan State planning agency that the Detroit Police Department's EEOP was not in compliance with LEAA guidelines. This finding was communicated to me on June 19, 1975. I sent a letter to Chief Philip Tannian of the Detroit Police Department on July 1, 1975, indicating that this matter would be referred to OCRCm The matter was referred on July 7, 1975, and on August 4 and 5, 1975, two representatives of OCRC went to Detroit and met with police officers and representatives of the Special Projects Section of the Detroit Police Department. The Department's EEOP was analyzed and recommendations were set forth in correspondence dated August 26, 1975, from Mr. Rice to Chief Tannian. The Department submitted a revised EEOP on January 6, 1976, and it is currently undergoing evaluation.

OCRC has collaborated with the Office of Inspector General in the revision of their Audit Manual to help the Office of Inspector General in the audit of civil rights matters. Issuance of that manual is expected shortly.

III. *LEAA's Civil Rights Activities—A Further Statement*

A. *Preface*

In the preceding part of this Statement of Reasons, I have tried to make plain and unmistakable LEAA's commitment to effect civil rights compliance in criminal justice agencies.

I trust that it will not be miscontrued when I say that, in

carrying out that commitment, LEAA must deal with what is realistic and what is practicable.

For example, LEAA must recognize that it cannot singlehandedly do a job that is addressed jointly by many agencies in civil rights enforcement activities affecting State and local criminal justice agencies in the United States. Thus, LEAA cannot supersede the Equal Employment Opportunity Commission, the Civil Rights Division of the Department of Justice, or the activities of private litigants and State and local civil rights agencies. While LEAA is fully committed to a comprehensive compliance program, it cannot replace all the other apparatus in this Nation which seeks to assure that full civil rights are achieved within the American system.

A notable example of a coordinated effort initiated by LEAA which resulted in very complete and comprehensive relief occurred with the Chicago Police Department. In June 1971, a formal complaint was filed with LEAA alleging that the Chicago Police Department engaged in discriminatory hiring practices and techniques, methods of promotion, disciplinary procedures and assignments within the department. After a lengthly investigation, a comprehensive report was issued which indicated that the complaint had merit. LEAA informed the Chicago Police Department that it appeared to be engaging in unlawful discriminatory employment practices.

LEAA engaged in extensive discussions with the City of Chicago in the hopes of voluntarily resolving the problems. In the Spring of 1973 when it appeared that a voluntary settlement could not be arrived at, LEAA referred the matter to the Civil Rights Division of the Department of Justice. In August 1973, a lawsuit was initiated which ultimately resulted in a finding by the U.S. District Court in Chicago on January 5, 1976, that the city of Chicago "knowingly discriminated against women, blacks and Hispanics in the employment of police officers." *Unites States* v. *City of Chicago, et al.*, ___ F.Supp. ___ (N.D. Illinois, Jan. 6, 1976)—No. 73C2080.

The lawsuit led to the withholding of all general revenue sharing funding to the City of Chicago until the City comes into civil rights compliance. On December 18, 1974, the District Court for the District of Columbia in *Robinson* v. *Shultz*, Civil Action No. 74-248, first enjoined payment to the City of Chicago because of the police department's discriminatory practices.

The order of the court included a requirement that of the next 600 police officers employed, 300 be blacks and Hispanic males and 100 be females. This was a figure previously agreed to by the parties but not yet carried out. Thereafter the court concluded that a hiring standard of 42 percent black and Spanish surname males and 16 percent females should be imposed until further order of the court. A promotion standard of 40 percent for black and Spanish surname males was granted and the United States' request for back pay to those who were injured by the City's discriminatory hiring and promotion practices.

In this connection it should be noted that, according to the Criminal Justice Directory Survey conducted in 1970, and updated in the interim, the February 1975 publication of LEAA's National Criminal Justice Information and Statistics Service there are a total of 57,575 State and local criminal justice agencies in the United States. Of these, 20,158 are police-type agencies broken out as follows:

17,464—General purpose police
987—Special police
1,707—Coroners/medical examiners

All of the other kinds of criminal justice agencies—principally courts and corrections facilities—totalling 37,417 are eligible for LEAA funding. A sizeable number of these agencies are LEAA recipients.

In recognition of the practical limitations on investigating every possible violation by every recipient criminal justice agency, LEAA has continually increased its monitoring of the civil rights responsibilities of recipient agencies through training, technical assistance and programmatic requirements designed to educate, assist and require a self-evaluation by these agencies. The question is not *whether*

to effect civil rights compliance, but *how* to *best* accomplish it. On this question, LEAA has been open and continues to be open to suggestion.

A concrete example relates to the complaint affecting the 19 California city police departments. (Dealt with in more detail in the Appendix.) For LEAA to have fully investigated the complaint regarding all 19 cities in California, there would have been, as a realistic matter, little or no staff to handle other compliance needs. Accordingly, LEAA arranged with the complainants' representatives to investigate only three of those cities.

B. *The Office of Civil Rights Compliance*

An Office of Civil Rights Compliance has been established within LEAA and has primary authority to see to it that recipients of LEAA funds comply with applicable civil rights statutes, orders, rules and regulations. The authority of this office to address problems of discrimination was expanded with the 1973 Amendments to the Crime Control Act which included Section 518(c) providing that:

> "No person in any State shall on the ground of race, color, national origin, or sex be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title."

OCRC was created in May of 1971. Prior to that time civil rights questions were handled by one attorney in the Office of General Counsel.

During FY 1972 (July 1, 1971—June 30, 1972) OCRC acquired a staff of six professionals and two clericals. During FY 1973 the staff increased to nine professionals and three clericals. During FY 1974 OCRC increased to twelve professionals and three clericals, and during FY 1975 the staff increased to sixteen professionals and three clericals. This same number of full-time permanent positions will continue through FY 1976 because there are no monies whatsoever in LEAA's appropriation for FY 1976 for any new positions in any part of LEAA.

However, OCRC has been given eleven temporary posi-

tions for staff support. These include two full-time clericals, two part-time "stay-in-school," one full-time staff aide, one part-time clerical, two part-time law students, one program assistant, one part-time expert, and one special assistant. Three new temporary positions for investigations are being filled at the present time.

In accordance with the statutes and regulations that provide for LEAA's civil rights responsibilities (see Manual, Attachment 1), OCRC works toward the goal that equal employment opportunity is practiced by LEAA recipients, subgrantees and contractors and that services are equitably provided by those police agencies, court systems, correctional agencies and other criminal justice agencies which receive LEAA assistance. OCRC works with criminal justice operational and planning agencies in four basic areas: the conduct of civil rights compliance reviews and audits; resolving complaints of discrimination; monitoring of the employment practices of contractors in Federally-assisted construction; and supporting technical assistance and other programs to improve employment practices and community service practices of recipient agencies.

At all times germane to the allegations of the present complaint, OCRC was organized into three principal line operations:

(1) A *Complaints Division*, which is responsible for investigation and prosecution of efforts to informally resolve complaints of discrimination lodged with LEAA and involving recipients of LEAA funds;

(2) A *Compliance Review Division*, which is responsible for the conduct of pre-award and post-award compliance reviews of the personnel and operational practices of recipients of LEAA funds, including efforts at informal resolution of compliance problems uncovered as a result of such reviews;

(3) A *Contract Compliance Division*, which is responsible for assuring the compliance of recipients of LEAA funds utilized in the construction or renovation of facilities with the provisions of Executive Orders 11246 and 11375. This Division conducts audits and on-site compliance re-

views, as well as collecting forms and data showing the location, extent of completion, and relative utilization of minority and female labor on such projects.

1. *Conduct of Compliance Reviews*

Since early 1972, OCRC has conducted compliance reviews of major law enforcement agencies and several State correctional agencies and institutions. Extensive reviews of State and municipal law enforcement bodies, probation and parole agencies, prison and detention facilities and juvenile court systems are planned for the future. To date, 19 criminal justice agencies have been reviewed.

OCRC has analyzed numerous police agencies in terms of: LEAA funding; minority persons presently employed by agency; minority population of the State, county or city served by the agency; existing complaints received by LEAA, the Equal Employment Opportunity Commission or the Civil Rights Division of the Department of Justice; and pending related civil suits. Priorities for scheduling compliance reviews have been developed on the basis of these factors, with preference being given to those departments with the highest funding and the greatest disparity between minority employment and minority percentage of the service population.

Compliance reviews runs one to two weeks and are concerned with both equal employment and program services. The areas examined are: recruiting, qualifications and tests, promotions and assignments, utilization of minority and female employees, disciplinary procedures, handling of citizens' complaints and community services. Community services can include the types of arrest by race, the number of arrests by race, location of equipment and personnel by neighborhood, response time to service calls from identifiable minority areas as compared to non-minority areas, and police handling juveniles by race and sex. The review team does extensive interviewing of community interest groups—particularly in minority areas of the community—to determine the community perception of the police department and the services which it provides.

Reviews of State and local corrections systems focus on equal employment opportunity and on equality of services to those individuals under the supervision of correctional authorities in institutional settings as well as community programs. Examples of areas studied during the review process include disciplinary proceedings and actions within adult and juvenile institutions, classification systems, equal access by both sexes and all ethnic groups to employment and education programs offered by corrections agencies, parole hearings and assignments to specialized treatment programs such as halfway houses and group homes. The review team interviews staff, clients and prisoner advocate groups to learn how each group perceives the civil rights compliance posture of the agency or facility. A full-scale compliance review of the Virginia State Department of Corrections was undertaken in FY 1975. The review involved a complete evaluation of the entire Department's hiring practices and a study of its services delivery mechanisms for juvenile offenders.

Recommendations were made for improvements in the Department's hiring practices regarding minorities and females for both corrections and administrative staff. Recommendations for the adult system were forwarded to the Governor of the State on December 16, 1975.

The review was large in scope, encompassing a full two-week period.

In July 1975 OCRC received a complaint alleging discriminatory employment practices against the New York Police Department, the largest in the country. To investigate these allegations we have scheduled an on-site compliance review.

2. *Equal Employment Opportunity Program Audit Program*

The Compliance Review Division in December 1974 initiated a program of conducting desk audits of the EEOP's of selected LEAA recipients. LEAA regulations require an EEOP as a condition of new and continued funding of all recipients receiving more than $25,000 with minority popula-

tions greater than 3 percent and who employ fifty or more persons (28 C.F.R. 42.301 *et seq.*, Subpart E). Where the minority population is less than 3 percent, the agency must still prepare an EEOP relating to women.

Since the initiation of the program, numerous State planning agencies have voluntarily submitted recipient's EEOP's to OCRC for audit. Occasionally, an SPA or OCRC stops the drawdown of new grant awards until complete EEOP's are received. The California State planning agency has submitted over 20 EEOP's for OCRC's review. Under this program, the Compliance Review Division conducted or is conducting desk audits of 33 criminal justice agencies.

3. *Survey*

OCRC in FY 1975 conducted a sworn force employment survey of the 16 law enforcement agencies it has conducted on-site reviews of since 1972. This survey discovered that since the time of review the number of black officers on all of these departments has gone from 1,821 (8.2 percent of the total officers on these departments) to 2,290 (9.9 percent of the total officers), an increase of over 25 percent. The number of Hispanic officers has increased from 362 (1.6 percent of the total officers on these departments) to 533 (2.4 percent of the total officers) for an increase of over 50 percent. Female sworn officers have gone from 255 (1.1 percent of total officers) to 584 (2.5 percent of total officers) for an increase of over 125 percent. The total overall sworn force size of these 16 departments has gone from 22,177 to 23,061 for an increase of 4 percent.

4. *Pre-Award Compliance Review Program*

The Compliance Review Division routinely conducts compliance reviews of all discretionary grants awarded by LEAA amounting to $750,000 or above. The dollar amount, however, will change when the proposed OCRC Master Plan is finalized. At that time, OCRC will have discretion to review all DF applications of $500,000 or more. It is estimated that this will result in substantially increasing the number of pre-award reviews to be conducted.

In pre-award reviews, the measures of compliance are:

(a) non-discriminatory employment procedures; and

(b) non-discriminatory delivery of services, i.e., are the various groups which make up the eligible service population to be equally served and, if not, is there a valid justification for any significant disparities?

Since this program was initiated in October 1973, it has taken the vast majority of the Compliance Review Division's resources, i.e., over 70 percent of available person hours. The time required to conduct a pre-award compliance review, including the period at which the application is received through on-site review and drafting of special conditions, averages 21 person hours each application.

In FY 1975, OCRC undertook initial investigation of 41 pre-award compliance reviews. Of that number, 17.1 percent (7) resulted in on-site reviews, while another 15 percent (6) were conducted through desk audits of EEOP's. Of the 28 remaining, approximately 90 percent of these applications were rejected for funding. The other 10 percent would include applications which were withdrawn or which fell below the $750,000 cut-off figure.

Of the pre-awards culminating in either desk audits or on-site reviews, 92.3 percent (12) resulted in special conditions to the instrument of grant.

5. *Compliance in Federally-Assisted Construction Contracts*

Executive Orders 11246 and 11375 prohibit discrimination based on race, creed, color, national origin or sex by Federal contractors and subcontractors and place upon the Secretary of Labor the responsibility for their implementation. The Secretary in turn has delegated to the Office of Federal Contracts Compliance (OFCC) of the Department of Labor the authority to adopt rules and regulations necessary to implement the Orders and to monitor and supervise the activities of all Federal agencies in this area. Accordinglyn the OCRC coordinates with the OFCC in meeting LEAA's responsibilities for monitoring the equal employment practices of contractors awarded contracts for con-

struction or renovation of facilities with LEAA financial assistance. Guideline G 7400.1A, issued February 1973, and Guideline G 7400.1B, issued June 4, 1974, advised the State planning agencies that they are the primary source of information on construction projects.

Upon approval of a grant application for LEAA funding exceeding $10,000, the State planning agency must provide OCRC with identifying information on the forthcoming project. OCRC will then provide the identified contractor with monthly reporting forms that detail the utilization of minority and female employment on the project by trade, person-hours and numbers of minority, female and total employees.

Affirmative action plans are required of all contractors and subcontractors awarded Federally-assisted contracts of $50,000 or more and who employ 50 or more persons. Such plans include consideration of recruitment, promotions, transfer, lay-offs or terminations, rates of pay and selection for training, including apprenticeship. Plans must include numerical goals and timetables for the achievement of full and equal employment opportunity for minorities and women, where Federally-assisted contractors have personnel practices that are deficient as they affect persons in either of those categories.

Construction project information is analyzed by both LEAA and OFCC—particularly regarding those LEAA-funded projects in communities that have Hometown or Imposed Plans. LEAA Contract Compliance staff have participated regularly in OFCC construction compliance reviews and audits in communities with Hometown or Imposed Plans. These reviews consist of pre-bid and pre-construction conferences, of on-site visits, and of evaluation of reports submitted by the contractor. Additionally, LEAA Contract Compliance staff conduct pre-bid conferences on contracts, as deemed necessary. As of August 1975, the Contract Compliance Division, OCRC, is monitoring 17 construction projects in Plan Areas which represents over $33 million in Federal funds. This represents

more than half of the construction money provided by LEAA in FY 1973, FY 1974 and FY 1975.

6. *Resolution of Complaints*

As evidenced by the foregoing discussion, OCRC conducts a number of other vitally important civil rights functions in addition to the important task of resolving complaints. However, complaint resolution has assumed a prominent position in the responsibilities of OCRC.

Any person who has a complaint of discrimination based on race, color, national origin, creed or sex in the personnel practices of an agency receiving LEAA funds, or in the provision of program services by such an agency, may notify OCRC, or the relevant State planning agency, which will forward a copy of the complaint to OCRC.

Upon receiving the complaint, OCRC examines the charge to determine if the allegations indicate discrimination prohibited by civil rights laws and regulations applicable to LEAA and if the agency being complained about is an LEAA recipient. If OCRC determines that it has jurisdiction, the individual filing the complaint and the SPA are informed that the complaint is being processed. If a complaint appears valid but falls under the jurisdiction of another unit of the Federal government, LEAA refers it to that unit.

The respondent agency is then informed of the charges and is directed to respond to an interrogatory letter requesting data and information relative to the issues raised by the complaint. When the requested information has been received and analyzed, an on-site investigation is scheduled unless the matter can be settled on the basis of information received by mail.

OCRC is currently formalizing its referral relationship with several EEOC District Offices and has promulgated new guidelines that would give those State planning agencies that have the interest and capacity to engage in civil rights compliance activities the opportunity to do so. OCRC will retain substantial oversight over the State planning agency's conduct of these activities. These guidelines became effective January 21, 1976.

The OCRC complaint desk caseload, as of January 21, 1976, is as follows:

	Fiscal Years				Totals
	FY 1973	1974	1975	1976	(incl. FY 1972)
*Active Cases	18	50	112	90	276
**In-Active Cases (Open)	17	29	6	0	54
Cases Closed	29	22	12	0	97
Totals Rec'd Per FY	64	101	130	90	427

It is estimated that approximately 200 complaints will be docketed in FY 1976.

The 427 complaints which have been received by LEAA are broken out into the following criminal justice agency categories:

296—Police Departments
21—Sheriffs' Departments
52—Corrections and Prisons
10—Courts
11—Universities (these are referred to DHEW under a delegation of authority)
4—Probation and Parole
4—Juvenile Detention Centers
12—Various Miscellaneous Criminal Justice Agencies
21—State Planning Agencies

Note: There may be more than one complaint against an individual agency. These are total complaints, by category.

*This was prior to the 1973 amendment to Section 518 of the Crime Control Act of 1973 which added Section 518(c).

*OCRC is presently undergoing reorganization along functional lines. Notwithstanding formal divisions, personnel will continue to be assigned to meet specific needs.

*Includes cases where OCRC is monitoring litigation.

**Being monitored for compliance with agreements.

7. *Technical Assistance Grants and Contracts*

LEAA is implementing a comprehensive program of civil rights enforcement and activities involving the fullest use of resources at the State and local levels. Accordingly, it is developing a technical assistance capability at the Federal level which will be shared with State officials as each State begins to develop a comprehensive compliance program.

LEAA has funded a number of technical assistance grants and contracts in the civil rights area. A brief description of the most significant grants follows.

The first grant awarded to strengthen the civil rights capabilities of State planning agencies and criminal justice agencies established the *Center for Criminal Justice Agency Organization and Minority Employment Opportunity* at Marquette University. The main function of the Center is to recruit and retain minority personnel and women. The Center through its full-time staff and consultants has provided assistance to 87 law enforcement agencies during the past calendar year. To broaden and apply its expertise, the Center is currently researching:

—The extent of minority employment by police agencies;

—The minority recruitment drives of major police departments and the reasons for their success or failure;

—The extent of discrimination in police forces as a factor hindering recruitment and retention of minorities;

—Methods of improving the police image in minority communities;

—Police employment standards and employment testing as they affect the recruitment of minorities for law enforcement work.

In addition, the Center is currently providing long-range technical assistance to several police departments, and the Center is also holding workshops in numerous cities to develop an awareness among those who should be concerned with structuring solutions to the problem.

The civil rights contract with the National Urban League, creating the *Law Enforcement Minority Manpower Project* (LEMMP), has been renewed for a third consecutive year of operation. LEMMP conducted successful programs during FY 1973 in three cities (Cleveland, Ohio; Dallas, Texas; and Newark, New Jersey) and in three different cities (Springfield, Massachusetts; Sacramento, California; and Little Rock, Arkansas) during FY 1974. LEMMP currently (FY 1975) has minority recruitment programs at four new locations (Lexington, Kentucky; Jackson, Mississippi; Topeka, Kansas; and White Plains, New York). The scope of LEMMP has been expanded to impact counties and entire States, and there is greater emphasis placed on recruiting Hispanics and American Indians. During the first three years of LEMMP, 11,600 minority prospects were interviewed and 4,000 were hired by criminal justice agencies.

A contract was awarded to the *International Association of Official Human Rights Agencies* (IAOHRA) to train members and staffs of State planning agencies, local criminal justice planning agencies and State and local human rights agencies in matters relating to civil rights compliance in the criminal justice community. At this writing the Association has trained 4,670 individuals and has visited 122 State or local criminal justice agencies.

During 1975, IAOHRA provided training to State planning agencies and criminal justice agency EEO personnel in the ten LEAA regions. This training focused on new LEAA regulations affecting recipient civil rights compliance responsibilities and LEAA requirements for the development and implementation of EEOP's in LEAA-funded criminal justice agencies.

A grant was awarded last year to the *Hispanic Law Enforcement Training Institute of Justice*. Its activities were aimed toward improving the relationship between the Hispanic community and criminal justice systems by recruiting, counseling and training men and women of Hispanic origin interested in law enforcement careers. The geographic focus of its work has been in the New York metropolitan area.

The project has serviced over 2,000 persons to date. It is hoped that the pending evaluation will show the program to have been highly successful and serve as a valuable model for replication in other areas of the country where there are large concentrations of Hispanic people.

The project's activities in New York have now been phased out. New York City, which was the laboratory for the project's work, has ceased hiring and is likely to place police officers on payless furloughs. Under these circumstances, it was determined that it would be unlikely that the project could carry on with its work.

LEAA has funded a project of national scope to improve the methods of selection for employment of law enforcement personnel. This grant, involving industrial psychological testing, has been awarded to the University of Chicago's *Industrial Relations Center*.

The grant has as its objective the development of a test instrument for selection of municipal police officers in departments ranging in size from approximately 700 officers to 7,000 officers. Also, a similar test instrument will be developed for use by State highway patrols and State police agencies. Another objective of this grant is to develop new test items which can be shown to be job-related, and have at the same time, a minimum adverse impact on minority applicants. This project is budgeted on a three-year basis, but funded one year at a time. Funding in subsequent years, if available, will aim at concurrent and predictive validation of the test instruments involving all areas of the country.

LEAA awarded a grant for $125,000 to the *City of Cleveland* for the benefit of the *Police Department*. This grant, the first of its kind funded by LEAA, is for the development of job-related promotional examinations which have no significant adverse racial or sexual impact. The grant also funds development of non-discriminatory entrance level screening procedures such as background investigations and polygraph tests. Finally, the grant calls for development of training curricula for each rank of the police department, which training is job-related and not

limited to members of a particular race or sex. A replication document will be prepared as part of the grant which will enable other departments to benefit from the research done in Cleveland.

8. *Negotiation and Enforcement*

The primary purpose of civil rights law is to establish equal opportunity, not to withhold Federal assistance. LEAA is firmly committed to the principle that the initial step in the resolution of civil rights compliance problems must be a serious attempt to achieve a voluntary settlement. This is the philosophy underlying the conduct and follow-up of compliance reviews and the processing of complaints by LEAA. Thus, after an investigation, OCRC meets with the individual and criminal justice agency to discuss resolution of the matter and make recommendations for eliminating possible discriminatory practices. We have found the process of negotiation an efficacious means of achieving voluntary compliance with LEAA recommendations. After the recommendations have been implemented, OCRC periodically monitors the results and makes certain that the agency abides by the terms of the agreement.*

On August 26, 1975, I sent a letter to the Governor of Hawaii advising him that the Honolulu Police Department was not in compliance with Federal civil rights requirements and that lack of resolution would result in appropriate enforcement proceedings. Subsequently, the Honolulu Police Department deleted its minimum height requirements.

---

*Contrary to the allegations (par. 25) of plaintiff's complaint, an employment discrimination case was not filed by the Department of Justice against the South Carolina Highway Patrol. The Attorney General of the United States has authorized the Civil Rights Division to file suit in this case. However, I sent a letter to the Governor of South Carolina on January 16, 1976, notifying him of the non-compliance and that voluntary efforts have failed to resolve the situation. The Governor was given until March 1, 1976, to try to effect a voluntary settlement. No suit will be filed by the Civil Rights Division during this time.

In February 1975 I was made aware of a non-compliance matter involving the Police Department of St. Louis in which I was prepared to take enforcement action. In that matter, officials in St. Louis, upon learning that they faced the prospect of such action by LEAA, voluntarily complied, obviating the necessity of taking enforcement action.

On January 29, 1976, I sent a letter to the Governor of Pennsylvania, advising him of the non-compliance of the Philadelphia Police Department, and requesting his assistance in securing their compliance. If the Governor cannot secure compliance by March 29, 1976, LEAA will initiate fund-termination proceedings pursuant to Section 509 of the Crime Control Act.

Since 1974, when EEOP desk audits were begun, we have deferred drawdown of funds on new awards to 21 criminal justice agencies which had incomplete EEOP's. Complete EEOP's are a prerequisite to funding.

In mid-January 1975, I was apprised of the fact that the cities of Pittsburgh and McKeesport had failed to complete an EEOP covering the local Police Departments as required. Cornelius M. Cooper, Regional Administrator of LEAA, located in Philadelphia, wrote to John Snavely, the Executive Director of the Pennsylvania State planning agency, on January 24, 1975, directing the State planning agency not to award any further subgrants to those cities until compliance with the EEO Guidelines was achieved. The action was done with my knowledge and full support. The cities of McKeesport and Pittsburgh have now submitted satisfactory EEOP's.

When the Administration of LEAA determines, on the basis of information and recommendations from OCRC and the Office of General Counsel, that voluntary compliance cannot be achieved, it must then resort to the appropriate enforcement mechanism.

If the area in which non-compliance has been found falls within Section 518(c) of the Act, the chief executive of the State in which the non-compliance exists is notified and requested to intervene and secure compliance. If within a reasonable period of time after notification the chief execu-

tive is unable or unwilling to resolve the situation to LEAA's satisfaction, administrative proceedings for fund cut-off must be initiated. If the Administration, after reasonable notice and opportunity for a hearing finds that there has been a failure to comply with Section 518(c), it may suspend all funding to those areas or activities where the finding of non-compliance was made. A recipient may request a rehearing, and further provision is made for judicial review of the Administration's decision. Concurrent with administrative proceedings, LEAA may pursue appropriate judicial actions as provided by law, if it so chooses.

Judicial and administrative sanctions are also provided under Title VI of the Civil Rights Act of 1964 and the LEAA Equal Employment Opportunity Regulations.

IV. *Methods—Practical, Impractical, Appropriate and Inappropriate*

A. *Plaintiffs' Proposals*

In their prayers for relief in the Amended Complaint, plaintiffs propose various methods of seeking to effect civil rights compliance.

Thus, in the prayer for relief numbered D4, plaintiffs seek to require LEAA:

> "to award LEAA funding only to those departments which have been determined by the defendants to be in civil rights compliance and to place all pending LEAA funding in escrow until there has been a determination of civil rights compliance."

This seems to mean that LEAA should make no grant to any department until there has been a determination that the particular department is in civil rights compliance. This is inconsistent with the approach taken in the statute; it would be impractical; and it would result in a frustration of the purposes of the statute because of the indefinite delay in funding that would result.

A second proposal by plaintiffs is that, upon a judicial finding of discrimination, LEAA should immediately suspend and terminate funding. Prayer D1. This proposal can

be tested against a hypothetical case that has points of resemblance to that involving the Indiana State Police dealt with in the Appendix.

Let us take a case in which a complex factual stituation is the subject of litigation between a private party and a police agency. The private party is represented by an organization with expertise in this area and the resources and abilities to prosecute the case energetically. The case results in a lengthy judicial opinion which takes a few months for the court to prepare. The court's findings agree with some allegations and reject others. Rendering appropriate relief will take an additional period of time. To say that LEAA should jump into such a case in the middle is to counsel administrative action that is imprudent and unsound.

The reasons: LEAA resources would be diverted to a purpose that would be duplicative; LEAA would be injecting itself into a situation in which the court had made findings in the first instance, but LEAA would be unaware what remedy the court would deem appropriate for the violation it found. Considering the relationship that courts and agencies should have toward one another, such action by an agency—absent some strong special circumstance—would be presumptuous.

In this regard, it should be remembered that, under the Act, fund cut-off is coercive not punitive. There is no reason to presume that if a lower court orders relief and the order is not stayed, the police agency will violate it. If an order is issued and obeyed, it is difficult to find the warrant for instituting fund cut-off proceedings.

On the other hand, if the order should be stayed, there would be, at a minimum, a presumption against initiating fund cut-off. For, if a court exercises its discretion to make the remedy await appellate action, the court might be justly displeased if LEAA were to insist on action in advance of appellate review.

To put the matter another way: Assuming that a court finds discrimination, there is not a magic wand that can be waved that can immediately eliminate discrimination. The

court must determine the appropriate relief and the practicable pace of relief to eliminate discrimination. This is the task of LEAA where it negotiates with a department or makes a determination of discrimination. But ordinarily it is not appropriately the role of LEAA where the court had adjudicated the case and has the discretion to set appropriate terms of relief.

Plaintiffs would have LEAA immediately terminate funding to law enforcement agencies which have been judicially determined to be in violation of civil rights laws. However, Section 518(c) provides that the Administration, after determining a failure to comply, must afford the chief executive of the State a reasonable time to secure compliance. Plaintiffs' proposal that LEAA immediately suspend and terminate funding to agencies judicially determined to be in violation of civil rights laws runs into at least the following obstacles:

First. It ignores LEAA's legal responsibility to seek the voluntary compliance of a recipient it believes to be in noncompliance.

Second. It assumes that the Administration can and should automatically make the same determination as a court.

Third. It reads the opportunity for an administrative hearing out of the statute.

Fourth. It reads the opportunity of the chief executive to secure compliance out of the statute.

Even if all that plaintiffs sought were for the Administrator to commence administrative proceedings immediately upon a judicial finding of violation, their proposal would be unsound. In order for the Administration to afford the chief executive the opportunity to secure compliance, LEAA would have to establish the appropriate remedy for the discrimination he determined to exist. If the court had not yet established a form of relief, the Administration would have to preempt the court by deciding what relief is appropriate. If the court had already established relief by means of an order, it is difficult to understand what purpose LEAA intervention at that stage would serve.

Thus, LEAA will ordinarily defer administrative action on a complaint when the same matter is pending in a court of law.* This pragmatic approach which takes advantage of the resources of the judiciary best serves the civil rights responsibility of LEAA. Discriminatory charges are being aired in a forum competent to decide the issue. LEAA can then draw on the findings and conclusions and proceed accordingly, obviating the necessity of expending its own resources on a matter already competently reviewed. LEAA can then direct its resources to matters that may not otherwise surface in a court of law but are equally deserving of attention. This is an acknowledgement of the fact that it is a practical impossibility for LEAA to promptly resolve every complaint it receives.

The deferral approach of LEAA was approvingly commented upon in *Hardy* v. *Leonard*, 377 F. Supp. 831 (N.D. Calif. 1974). Here, a class action by women who were denied employment with the Oakland Police Department was brought, seeking an order requiring LEAA to determine whether the police department was complying with Federal equal employment requirements, and terminating financial assistance to the department if it were not so complying. The action was dismissed as being moot. In dismissing, the court reasoned that:

> "Defendant's evidence is convincing that LEAA has now complied with its responsibility to monitor and work with the OPD to assure compliance with relevant statutes regarding employment discrimination. It appears to the satisfaction of the court that LEAA has engaged in compliance discussion with the OPD, and that it has seen to it that the OPD has complied with the recommendations. *While the height and weight requirements for employment with the OPD remain in controversy, LEAA is properly awaiting the decision*

---

*It should be noted that I am *not* speaking here of a choice by LEAA to go to court rather than to take administrative action. When the Administration determines that a State or local government has failed to comply with Section 518(c)(1) or an applicable regulation, LEAA must notify the Governor in accordance with Section 518(c)(2).

on that question which should be forthcoming from the California Court of Appeals." (*Hardy* v. *Stumpf*, 37 Cal. App. 3rd 958, 112 Cal. Rptr. 739.)

In addition to conserving resources, the approach of deferring to a pending court action reduces the potential for conflicting court and agency results. Such results would promote confusion rather than the promotion of equal employment opportunity.

When an individual alleging discriminatory employment practices brings an action in court, there may be instances in which such action is accompanied by an administrative complaint with LEAA, and others in which it is not. Where it is not, it seems to me reasonable to assume that the individual has chosen that procedure for prosecution of his claim that he (or his counsel) deemed most appropriate.

Where the individual seeks to pursue both courses simultaneously, other considerations are relevant. As strongly as an individual feels a grievance, his claim is only a claim until authoritatively determined. Claims are made that are determined to be valid as well as invalid. Where there are not limitless resources in society to prosecute claims through various means simultaneously, it is reasonable ordinarily to defer action administratively where an individual pursues his judicial remedy.

Of course, if judicial proceedings are prolonged unduly, or if an agency violates a court order, a different situation may well be presented. There is no presumption, however, that a court will unduly delay disposition of a case, or that an agency will violate a court order.

Plaintiffs would also have LEAA initiate administrative proceedings while litigation initiated by a private party is pending and has not reached adjudication. Similar concerns are applicable here. With the number of law enforcement agencies in this country, and the number of civil rights activities needed to be conducted by LEAA, the duplication of effort that is involved in pursuing administratively matters being prosecuted judicially would be unsound and impractical administration. Even where the Civil Rights Divi-

sion has filed suit,* LEAA cannot automatically make a determination under Section 518(c) on the basis of allegations in a complaint filed by the Civil Rights Division. Similar questions of duplication of effort and intrusion upon the courts are presented as in the case of individual lawsuits.

It should also be considered that intrusion of LEAA into situations where a court of competent jurisdiction is considering a matter may in fact be counterproductive to the resolution of the problem in question. LEAA after all can only by administrative process seek a cut-off of funds. A court, on the other hand, commonly can afford broad individual or class relief in a case it is considering. For instance, it might order that a discriminatorily posted eligibility list be taken down or individuals unlawfully discharged, be reinstated. Administrative process may be effective to bring about compliance by a given recipient, particularly where significant amounts of LEAA funds are involved. But one cannot say, automatically, in all cases, that intrusion of LEAA's administrative processes into litigation testing the adequacy of a given agency's compliance posture would result in a more full or just resolution of a given matter. Employment discrimination cases are commonly extraordinarily complex to try, hearings commonly extending over many months, the court being required to examine volumes of testimony and to fashion interlocutory and final orders essential to do justice in an individual case. To require LEAA to pursue an administrative hearing in a case which is already being heard by a court of competent jurisdiction is ordinarily not only unsound but may result in confusing and conflicting testimony, conclusions and results.

LEAA must conduct its vital enforcement obligations in securing civil rights in such a way as to most effectively use the funds and people who are available. It is not merely negative thinking to acknowledge that LEAA cannot do it alone. There is a range of public and private remedies for eliminating discrimination. LEAA provides one of those remedies. But Congress did not provide private remedies

---

*See footnote on page 41.

and enforcement machinery in the Civil Rights Division and in the Equal Employment Opportunity Commission so that LEAA will track and duplicate functions and specific cases being addressed elsewhere. Accordingly, it is sound administration that where reasonable and possible LEAA should utilize other resources to assist it in its functions.

B. *Additional Reflections*

In order to make maximum use of other resources, LEAA has adopted a plan under which it can use those State planning agencies willing and able to operate as a first line for investigation and resolution of discriminaton complaints. In addition, LEAA seeks to use State and local civil rights agencies, and EEOC District Offices, where possible.

LEAA must effectuate its civil rights obligations in a manner that poses the least threat to those compelling congressional concerns that were fundamental in the formulation of the Act. Premature fund termination threatens the effective operation of the local police units, jeopardizing the peace, security and welfare of the local population. LEAA must employ the flexibility to operate in a manner which most effectively accomplishes its civil rights responsibility and at the same time accommodates the mandate of LEAA to improve law enforcement and help control crime.

Fulfilling the promise and dream of the United States means eliminating discrimination and affording equal employment opportunity. We at LEAA are seeking to help fulfill that dream. We cannot, however, overlook the fact that Section 518(a) of the Crime Control Act of 1973 states:

> "Nothing contained in this title or other Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over any police force or any other law enforcement and criminal justice agency of any State or political subdivision thereof."

This subsection cannot be read alone, for to do so would delete LEAA's obligation to help erase discrimination. But all parts of a statute must be given meaning; and the respect

for State and local authority that produced Section 518(a) should also condition the administration of other parts of the Act. I emphasize strongly that this does not minimize the civil rights responsibilities of LEAA. Reiterating what I said at an earlier portion of this Statement (p. 8), we at LEAA view and have viewed as a major priority the implementation of a comprehensive program to enforce the civil rights obligations of recipients of LEAA Federal assistance.

/s/

RICHARD W. WELDE
Administrator
Law Enforcement Assistance Administration

February 6, 1976

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civ. No. 75-1444

NATIONAL BLACK POLICE ASSOCIATION, INC., ET AL.,
PLAINTIFFS,

-v-

RICHARD W. VELDE, ET AL., DEFENDANTS.

Judge Corcoran

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS OR FOR SUMMARY JUDGMENT

Plaintiffs oppose defendants' motion to dismiss or for summary judgment. For the reasons set forth in Plaintiffs' Memorandum of Points and Authorities in Opposition to Defendants' Motion to Dismiss or For Summary Judgement, defendants' motion must be denied.

Aside from the lack of merit of defendants' motion, discussed in plaintiffs' Memorandum, defendants' motion for summary judgment must fail even without opposition by plaintiffs under Rule 56(e) of the Federal Rules of Civil Procedure. In support of their motion, defendants have filed a four-paragraph, one-and-a-half page Statement of Material Facts which sets forth no material facts; they have filed four conclusory affidavits which similarly set forth no material facts; and they have filed an unsworn and uncertified Statement of Reasons and Appendix, a compilation of allegations which is inadmissible and hence may not be utilized by the parties or by the Court under Rule 56(e). Accordingly, defendants' motion *must fail* under Rule 56, even *without opposition*.

To the extent, however, that this Court views any of the above documents or allegations as setting forth any material facts under Rule 56, plaintiffs submit the attached opposition papers pursuant to Rules 56(e) & (f). The genuine issues as to material facts set forth in these opposition papers require the denial of defendants' motion for summary judgment.

Plaintiffs request an oral hearing on their opposition to defendants' motion.

Dated: Washington, D.C.
March 24, 1976

/s/ _____
E. RICHARD LARSON
KATHLEEN WILLERT PERATIS
American Civil Liberties Union Foundation
22 East 40th Street
New York, New York 10016
(212) 725-1222

/s/ _____
MELVIN L. WULF
American Civil Liberties Union
410 First Street, S.E.
Washington, D.C. 20003
(202) 544-1681

/s/ _____
WILLIAM E. CALDWELL
Lawyers' Committee for Civil Rights Under Law
733 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 628-6700

/s/ _____
T. MICHAEL PEAY
PAUL R. DIMOND
Lawyers' Committee for Civil Rights Under Law
733 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 628-6700

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civ. No. 75-1444

NATIONAL BLACK POLICE ASSOCIATION, INC., ET AL.,
PLAINTIFFS,

-v-

RICHARD W. VELDE, ET AL., DEFENDANTS.

Judge Corcoran

ORDER

Upon consideration of defendants' motion to dismiss or for summary judgment and of plaintiffs' opposition thereto;

IT IS HEREBY ORDERED that defendants' motion to dismiss or for summary judgment is denied.

IT FURTHER ORDERED that plaintiffs' discovery filed in September, 1975 shall be answered by defendants within 20 days of this Order, and that all other discovery in this action, including depositions previously noticed and to be noticed by plaintiffs, shall proceed forthwith.

SO ORDERED:

/s/_____
UNITED STATES DISTRICT JUDGE

Dated: March , 1976

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civ. No. 75-1444

NATIONAL BLACK POLICE ASSOCIATION, INC., ET AL., PLAINTIFFS,

-v-

RICHARD W. VELDE, ET AL., DEFENDANTS.

Judge Corcoran

INDEX
PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

	Consecutive Pages
Statement of Genuine Issues	1
Affidavit of E. Richard Larson Pursuant to Rule 56(f)	38
Affidavit of Plaintiff Bruce Bailey	46
Exhibit A: Memorandum Opinion and Judgment in *Bailey* v. *DeBard*, No. IP 74-458-C (S.D.Ind. July 31, 1975)	51
Exhibit B: Administrative Complaint Filed with LEAA in August, 1975	126
Affidavit of Plaintiff Kristen Heemstra	128
Exhibit A: Administrative Complaint Filed with LEAA in May, 1975	133
Exhibit B: Letter from LEAA Dated January, 1976	136
Exhibit C: Response to LEAA Dated February, 1976	138
Exhibit D: Letter and Attachment to LEAA Regarding Continuing Noncompliance of the Des	

Moines Police Department 140
Affidavit of Plaintiff Kent McKinney 143
Exhibit A: Administrative Complaint Filed with LEAA in August, 1974 149
Exhibit B: Administrative Complaint Filed with LEAA in April, 1973 153
Affidavit of Plaintiff Penny Orazetti 173
Exhibit A: Letter From LEAA Dated January, 1973 Concerning Discrimination by the Portland Police Bureau 178
Affidavit of Plaintiff Roberta Ledyard 181
Exhibit A: Letter From LEAA Dated January, 1973 Concerning Discrimination by the Portland Police Bureau 185
Affidavit of Plaintiff Robert Booth 188
Exhibit A: Administrative Complaint Filed With LEAA in March, 1975 193
Exhibit B: Preliminary Injunction Order and Memorandum Opinion in *Reed* v. *Lucas*, Civ. No. 74–72798 (E.D.Mich July 16, 1975) 194
Exhibit C: Administrative Complaint Filed with LEAA in August, 1975 201
Affidavit of Plaintiff Jennie McAllister 203
Exhibit A: Complaint filed in *McAllister* v. *Honolulu*, Civ. No. 75–248 (D.Haw. Filed July 17, 1975) 206
Exhibit B: August 22, 1975, Honolulu News Announcement of This Action, *NBPA* v. *Velde*, Civ. No. 75–1444 (D.D.C. filed September 4, 1975) ... 223
Exhibit C: Administrative Complaint Filed With LEAA in August, 1975 224
Affidavit of E. Richard Larson Pursuant to Rule 56(e) 225
Exhibit Filed Separately: LEAA Computer Print-Out of LEAA Funding to Law Enforcement Agencies

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civ. No. 75–1444
Judge Corcoran

NATIONAL BLACK POLICE ASSOCIATION, ET AL.,
PLAINTIFFS,

-v-

RICHARD W. VELDE, ET AL., DEFENDANTS.

STATEMENT OF GENUINE ISSUES

Defendants' four-paragraph, one-and-a-half page Statement of Material Facts sets forth no material facts. Several allegations of fact, however, are set forth in defendants' unsworn and uncertified (and hence inadmissible) Statement of Reasons and Appendix.

Although plaintiffs thus are not required to do so, plaintiffs submit this Statement of Genuine Issues pursuant to Local Rule 1–9(h) and pursuant to Rules 56(e) & (f) of the Federal Rules of Civil Procedure. This Statement of Genuine Issues is submitted primarily in response to those allegations in defendants' Statement of Reasons and Appendix. The issues of material fact set forth herein are intended to be illustrative rather than exhaustive.

In this Statement of Genuine Issues, plaintiffs have arranged the issues under three major headings:

—Issues Concerning Defendants' Allegations As To Their Overall Civil Rights Program

—Issues Arising From Defendants' Inconsistent Allegations

—Issues Concerning Defendants' Allegations As To The Specific Examples Of Their Civil Rights Actions

Within these three headings, plaintiffs have responded where appropriate to defendants' inadmissible allegations: (a) with a summary of and reference to the allegation; (b) with a statement of the genuine issues; and (c) with a reference to plaintiffs' unresponded to discovery which, if responded to, would undermine and contradict defendants' allegations [Rule 56(f)] and/or with a reference to an affidavit or document submitted herewith or on file with the Court which places defendants' allegations in issue [Rule 56(e)]. For purposes of clarity, all references are made in abbreviated form.*

The genuine issues set forth herein should be reviewed in light of the claims in plaintiffs' complaint, *i.e.* that defendants have provided unabated LEAA funding to discriminatory law enforcement agencies in violation of defendants' constitutional and statutory civil rights obligations. Among those obligations are those set forth in § 518 of the Omnibus Crime Control and discrimination by recipients of LEAA funding. Section 518(c)(2), 42 U.S.C. § 3766(c)(2), sets forth the steps required of defendants to enforce that nondiscrimination mandate: first, defendants must determine whether "any unit of general local government has

---

*Defendants' inadmissible 94-page Statement of Reasons is divided into two parts: a 47-page Statement and a 47-page Statement Appendix. References to the Statement are made to "S" and to the page number, *e.g.* "S 23." References to the Statement Appendix are to "SA," etc., *e.g.*, "SA 21."

References to plaintiffs' unresponded to discovery are as follows: Plaintiffs' First Interrogatories and Request for Admissions, *e.g.*, "Pl 1st I & RA ¶ 5." Plaintiffs' First Request for Production of Documents, *e.g.*, "Pl 1st RPD ¶ 6." Plaintiffs' Second Interrogatories, *e.g.*, "Pl 2nd I ¶ 7." Plaintiffs' Second Request for Admissions, *e.g.*, "Pl 2nd RA ¶ 8."

References to affidavits are to the affiant's name and, if appropriate to an exhibit, *e.g.*, "Larson Affidavit." References to affidavits and exhibits filed with Plaintiffs' Motion for a Preliminary Injunction are to that Motion and to the page number, *e.g.*, "Preliminary Injunction Motion, p. 128." References to findings on LEAA by the United States Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort—To Extend Federal Financial Assistance*, Vol. VI (Nov. 1975), on file with this Court, are, *e.g.*, "Civil Rights Comm. p. ."

failed to comply with paragraph (1) [prohibiting discrimination] of this subsection or an applicable regulation"; second, defendants "shall request the chief executive [of the state] to secure compliance"; and third, if "the chief executive fails or refuses to secure compliance," defendants "shall exercise the powers and functions provided in section 509 [42 U.S.C. § 3757]"—the administrative hearing proceedings to terminate funding. These three simple requirements, particularly the requirement that defendants "shall" request the Governor to secure compliance, must be read in conjunction with § 518(a), 42 U.S.C. § 3766(a), which enjoins the defendants from "exercis[ing] any direction [or] supervision . . . over any police force or any other law enforcement and criminal justice agency."

ISSUES CONCERNING DEFENDANTS' ALLEGATIONS AS TO THEIR OVERALL CIVIL RIGHTS PROGRAM

1.

(a) Defendants' allegations are nearly devoid of any mention of their LEAA funding to law enforcement agencies—much less to those which have been judicially determined to have practiced unlawful discrimination, those which had been determined by the EEOC and by state agencies to have practiced unlawful discrimination, those which have been determined by defendants to have been in noncompliance with § 518(c), 42 U.S.C. § 3766(c), or to have been in noncompliance with § 518(c), 42 U.S.C. § 3766(c), or to have been in noncompliance with defendants' regulations, 28 CFR Part 42, and those whose practices are *prima facie* in violation of law, in noncompliance with § 518(c), 42 U.S.C. § 3766(c), or in noncompliance with defendants' regulations, 28 CFR Part 42.

(b) Which law enforcement agencies described above have defendants provided LEAA funding to? How much LEAA funding have defendants provided to each such law enforcement agency? Have defendants ever requested a Governor to secure compliance of any such agency? Have defendants ever initiated the statutory fund termination proceedings against any such agency?

(c) Pl 1st I & RA ¶¶ 7, 17–31, 35–36, 41–48, 55–61, 73–78, 84, 87–101, 110, 113–114, 117–125, 130, 136–140, 147–157, 159–165, 169–170, 172–176, 178–181, 186; Pl 1st RPD ¶¶ 1, 5–6; Pl 2nd I ¶¶ 5–6, 8–9, 17, 23, 29–32, 34–46; Pl 2nd RA ¶¶ 7,10; Plaintiffs Affidavits; Preliminary Injunction Motion, *passim*; Civil Rights Comm., pp. 378, 380–384, 777.

2.

(a) Defendants' allegations are also devoid of any mention of defendants' use of their statutory fund termination proceedings.

(b) Have defendants ever used their statutory fund termination proceedings against any law enforcement agency? How many times? Against which law enforcement agencies? What were the results of each such administrative hearing? Were there any appeals from the administrative hearings to the courts? How much funding have defendants provided to each such law enforcement agency?

(c) See ¶ 1(c) *supra*.

3.

(a) Defendants' allegations are devoid of any mention of defendants' requests to Governors to secure compliance—with the exception of one request on January 28 or 29, 1976 to the Governor of Pennsylvania, S 35; SA 27–28; Velde Affidavit ¶ 19; and one request on January 16, 1976 to the Governor of South Carolina, Velde Affidavit ¶ 20.

(b) Excepting the above two requests—both of which were made *after* plaintiffs had served their motion for a preliminary injunction—have defendants ever requested any Governors to secure compliance of LEAA recipients? How many times? When? What law enforcement agencies were involved? What were the results of the requests? How much LEAA funding have defendants provided to each law enforcement agency?

(c) See ¶ 1(c) *supra*.

4.

(a) Defendants allege that of a total "of 57, 575 state and local criminal justice agencies in the United States," only "19 criminal justice agencies have been reviewed" in compliance reviews by defendants. S 19, 23. Defendants' allegations make no mention about the results of those compliance reviews.

(b) What are the reasons as to why so incredibly few compliance reviews have been undertaken? What were the results of those few reviews which were undertaken? Are there any documents indicating the results of those reviews? Were any of the criminal justice agencies found to be in noncompliance? Which criminal justice agencies were reviewed and which were found to be in noncompliance? Have any of those agencies been adjudicated by the courts to have engaged in unlawful discrimination? How much LEAA funding have defendants provided to each of the reviewed agencies?

(c) Pl 1st I & RA ¶¶ 10–12, 23, 139–163, 173; Pl 1st RPD ¶¶ 1–2, 4–6; Pl 2nd I ¶¶ 5–12; Pl 2nd RA ¶ 6–7; Orazetti Affidavit and Ledyard Affidavit; Preliminary Injunction Motion 91–117; Civil Rights Commission, *passim*.

5.

(a) Defendants allege that of a total "of 57,575 state and local criminal justice agencies in the United States," only "33 criminal justice agencies" have had or are having their EEOPs audited by defendants. S 19,25. Defendants' allegations make no mention of the results of those audits.

(b) What are the reasons that so few EEOP audits were undertaken? Does an EEOP audit determine merely the sufficiency of an EEOP as described on paper or does it determine whether the EEOP has been effectively implemented? What were the results of those few audits which were undertaken? Are there any documents indicating the results of those audits? Were any of the criminal justice agencies found to be in noncompliance? Have any of those agencies been adjudicated by the courts to have engaged in unlawful discrimination? How much LEAA funding have

defendants provided to each of the reviewed agencies whose EEOPs were audited?

(c) Pl 1st I & R ¶¶ 15–26, 37; Pl 1st RPD ¶¶ 1–2, 5–6; Pl 2nd I ¶¶ 5–12, 18–27, 39–46; Pl 2nd RA ¶¶ 6–7; Preliminary Injunction Motion pp 9–116. Civil Rights Comm., *passim*.

6.

(a) Defendants allege that during FY 1975 only "41 pre-award compliance reviews" were scheduled, that 7 were conducted through on-site reviews, that 6 were conducted "through desk audits of EEOPs," and that "of the 28 remaining, approximately 90 percent of these applications were rejected for funding." S 27. Defendants' allegations make no mention of the results of those pre-award reviews.

(b) What are the reasons only 13 pre-award compliance reviews were conducted? Were the 6 EEOP desk audits included in the total number of 33 desk audits that have ever been conducted by defendants, as referred to *supra*, see S 25 (*i.e.*, double counting)? What were the results of these pre-award compliance reviews? Were any of the reviewed agencies or EEOPs found to be in noncompliance? Which ones? Of "the 28 remaining" whose applications were "rejected for funding," what were the reasons for rejection? Did any of the rejections have anything to do with civil rights noncompliance? Which agencies? Prior to FY 75, how many and which agencies were reviewed in pre-award compliance reviews? How many criminal justice agencies have ever received LEAA grants of $750,000 or more, and how many of those have ever been reviewed in a pre-award compliance review? How many of the criminal justice agencies which have received LEAA grants of $750,000 or more have been adjudicated by a court to have engaged in unlawful discrimination?

(c) See ¶ 4(c) and ¶ 5(c), *supra*.

7.

(a) Defendants allege that they have received 427 complaints of discrimination, 276 of which are listed as active

cases, and 35 of which are listed as active or open cases dating back to FY 1973. S 30. Defendants' allegations make no mention of how many if any of the complaints have been investigated, and no mention of determinations of compliance or of noncompliance.

(b) How many complaints have resulted in defendants reaching a determination of noncompliance? Against which agencies? How much LEAA funding have defendants provided to these agencies? How many complaints have been deferred pending litigation? Against which agencies? How many respondent agencies have been adjudicated by a court of engaging in unlawful discrimination? Which agencies? What is the longest period of time that defendants have taken to resolve a complaint (including still unresolved complaints) from the date of filing of the complaint?

(c) Pl 1st I & RA ¶¶ 7, 13–14, 21–26, 36–41, 51–55, 63–73, 83–87, 92–119, 130, 135–138, 145–146, 160, 169, 178–181, 188; Pl 1st RPD ¶¶ 1–2, 5–6; Pl 2nd I ¶¶ 13–20, 39–46; Pl 2nd RA ¶¶ 1, 4, 6–10; Plaintiffs' Affidavits; Preliminary Injunction Motion, *passim*; Civil Rights Comm., *passim*.

ISSUES ARISING FROM DEFENDANTS' INCONSISTENT ALLEGATIONS

8.

(a) Defendants' allegations do not establish their policy or practice with regard to their deferral of complaints, investigations, determinations of noncompliance, statutory fund terminations, etc. during the pendency of local litigation against law enforcement agencies. At best, Defendants have alleged that they "will ordinarily defer administrative action on a complaint when the same matter is pending in a court of law." S 41. Their alleged actions, however, belie their general allegation since they sometimes defer and sometimes do not on the basis of no recognizable criteria. See, *e.g.*, New Orleans deferral, SA 4; New Orleans *no* deferral, SA 6; New Orleans deferral, SA 6; New Orleans *no* deferral; Wayne County deferral, SA 8; Wayne County *no* deferral, SA 9; Honolulu *no* deferral, SA 13; Philadel-

phia *no* deferral, SA 27–28; San Francisco *no* deferral, SA 31; San Jose deferral, SA 35; Los Angeles no allegation, SA 35; Richmond deferral, SA 37; Indiana deferral, SA 40–41.

(b) Do defendants have an established policy or practice of deferring or not deferring during the pendency of local litigation against law enforcement agencies? If so, what is that policy or practice? Have defendants established any formal criteria for deferral? If defendants do defer to pending litigation, what is their authority or basis for such deferral? Do defendants maintain any documents which reflect their policy, practice, criteria or authority for deferral?

(c) See ¶ 7(c), *supra*.

9.

(a) Defendants' allegations do not establish their policy or practice with regard to their regulatory [28 C.F.R. 42.206 (a), 37 Fed. Reg. 16671 (Aug. 18, 1972)] preference for judicial enforcement, rather than administrative enforcement of § 518(c), 42 U.S.C. § 3766(c). On the one hand, defendants recognize that their regulatory preference for judicial enforcement is unlawful by alleging that they are required to proceed administratively with administrative enforcement first under § 518(c)(2), 42 U.S.C. § 3766(c)(2). S 36, S 41 note, S 18. On the other hand, they do not allege that they have yet amended their unlawful regulation, S9; although they allege that they have proposed to do so, Velde Aff ¶ 14. Defendants' actual practices are equally as obscure. For example, defendants allege that their referral of the Chicago Police Department's noncompliance to the Civil Rights Division predated the August 6, 1973 effective date of the mandate in § 518(c)(2), 42 U.S.C. § 3766(c)(2), for administrative enforcement, and thus was lawful. S 18. Yet, they are notably argumentative and full of excuses as to their identical referral of the Philadelphia Police Department's noncompliance *six months after* the effective date of the mandate in § 518(c)(2), 42 U.S.C. § 3766(c)(2). SA 18–22. Indeed, defendants concede that they continued to follow their unlawful regulation rather than the mandate of the statute for nearly two years until late January, 1976,

two weeks *after* plaintiffs sought a preliminary injunction against defendants for their refusal to initiate statutory fund termination against the Philadelphia Police Department. S 35; SA 27; Velde Aff ¶ 19. Defendants' practices become even more unclear by their reference to thirteen Civil Rights Division lawsuits against law enforcement agencies with no indications of how many of those lawsuits were referred by defendants in lieu of seeking the mandated administrative enforcement. Levi Affidavit Attachment 3.

(b) What is defendants' policy with regard to their regulatory preference for judicial enforcement rather than administrative enforcement? What are defendants' past and current practices with regard to their regulatory preference for judicial enforcement rather than administrative enforcement? How many times have defendants referred noncompliance to the Civil Rights Division rather than seeking administrative enforcement? Which law enforcement agencies were involved? When were the referrals made? How much LEAA funding have defendants provided to those departments?

(c) Pl 1st I & RA ¶ 88–119, Pl 1st RPD ¶¶ 1–6; Pl 2nd I ¶¶ 29–32, 35–41, 43–46; Pl 2nd RA ¶¶ 1–5, 6; Preliminary Injunction Motion pp 1–68, 126–134; Civil Rights Comm. pp 378–384, 777.

10.

(a) Defendants' allegations do not establish their policy or practice with regard to their regulations requiring LEAA recipients "to formulate, implement, and maintain an equal employment opportunity program" (an EEOP) as a precondition to funding. 28 C.F.R. § 42.302. Although defendants concede that "LEAA regulations require an EEOP as a condition of new and continued funding," S 25, and that "complete EEOPs are a prerequisite to funding," S 36, defendants' allegations are filled with examples of their having funded numerous law enforcement agencies which have incomplete, unsatisfactory or no EEOPs, *e.g.*, Detroit, S 16; Wayne County, SA 8–9; Philadelphia, SA 22; San

Francisco, SA 33; San Diego, SA 33-34; Los Angeles, SA 35; Hayward, SA 36; Indiana, SA 41. Moreover, nowhere in defendants' allegations is there any mention of any practice by defendants to determine whether the EEOPs are being implemented.

(b) What are defendants' policies and practices with regard to determining the adequacy and implementation of EEOPs as a prerequisite to funding? Do defendants require that EEOPs be filed with grant applications or with applications for continued funding of previous grants? If not, why not? And if not, how have defendants insured that recipients have formulated, implemented and maintained adequate EEOPs as a prerequisite to funding? How many recipients have been determined by defendants to have inadequate or unsatisfactory EEOPs? Which recipients? How much LEAA funding have defendants provided to those recipients? Have defendants requested any Governors to secure compliance from recipients? Which recipients?

(c) See ¶ 6(c), *supra*.

ISSUES CONCERNING DEFENDANTS' ALLEGATIONS AS TO THE SPECIFIC EXAMPLES OF THEIR CIVIL RIGHTS ACTIONS

11.

(a) Defendants allege that they conducted an on-site investigation of the Des Moines, Newton, Ames and Urbandale Police Departments in December, 1975, seven months after receiving a complaint that those departments used sex discriminatory height requirements in violation of LEAA regulations. SA 1.

(b) Why did defendants need an on-site investigation to verify the maintenance of height requirements? Why did defendants wait seven months to obtain verification? Did defendants obtain written verification earlier than December, 1975? Did the defendants determine the departments to be in civil rights noncompliance prior to December, 1975?

(c) Pl 1st I & RA ¶¶ 13-14, 120-138; Pl 1st RPD ¶¶ 1, 5-6; Pl 2nd I ¶ 15-17, 33-41, 46; Pl 2nd RA ¶¶ 1,6;

Heemstra Affidavit; Larson Affidavit; Civil Rights Comm. pp 369–375.

12.

(a) Defendants allege that "findings of fact, conclusions of law and recommendations" were sent to the Des Moines and Newton Police Departments in January, 1976. SA 1.

(b) What were those findings and conclusions? Did defendants determine the Departments to be in compliance or noncompliance? How much LEAA funding have defendants provided to the Departments?

(c) Pl 1st I & RA ¶¶ 13–14, 120–138; Pl 1st RPD ¶¶ 1, 5–6; Pl 2nd I ¶ 46; Heemstra Affidavit; Larson Affidavit.

13.

(a) Defendants allege that Stephen Glassman and/or the Civil Rights Division declined to assist sex complainant Nancy Moore in her challenge to the Des Moines Police Department's minimum height requirement. SA 2.

(b) Did Mr. Glassman purport to act on behalf of the defendants? Did he pass the complaint along to defendants? When did defendants first discover the Department's use of the height requirement in violation of LEAA regulations?

(c) See ¶¶11(c) and 12(c), *supra*.

14.

(a) Defendants allege that they received a complaint of sex discrimination against the use of minimum height requirements by the New Orleans Police Department and that thereafter on December 15, 1972, a letter was sent to the New Orleans Police Department "requesting comprehensive data on the employment practices of the department." SA 3.

(b) Was the request responded to? Did the response indicate noncompliance? Did defendants make a determination of noncompliance? How much LEAA funding have defendants provided to the Department?

(c) Pl 1st I & RA ¶¶10–14, 16, 20, 139–148; Pl 1st RPD ¶¶1, 5–6; Pl 2nd I ¶¶5–9, 15–17, 27–28, 46; Larson Affidavit; Civil Rights Comm. pp. 348–389.

15.

(a) Defendants allege that the above sex complainant a year later filed a federal court lawsuit and that defendants "subsequently advised the complainant that LEAA would defer investigation of her allegations pending the resolution of the litigation." SA 4.

(b) Were defendants unable to verify in more than a year's time that the Department maintained discriminatory height requirements in violation of LEAA regulations? Had defendants determined noncompliance during that year? On what basis and authority did defendants "defer" their civil rights obligations?

(c) See ¶14(c), *supra*.

16.

(a) Defendants allege that in June, 1974 a letter was sent to the New Orleans Police Department presenting their "findings of fact and recommendations," which "recommended, among other things, that the department eliminate its height requirement or prove its operational necessity." SA 4.

(b) Did the defendants' "findings of fact" include a finding of noncompliance? If not, why not? Was the Department's minimum height requirement not in fact in violation of LEAA regulations?

(c) See ¶14(c), *supra*.

17.

(a) Defendants allege that another letter was sent to the New Orleans Police Department in December, 1974 "indicating that the height requirement would have to be eliminated or shown to be an operational necessity." SA 5.

(b) Had defendants yet determined the Department to be in noncompliance? Had defendants initiated their statu-

tory fund termination procedures? If not, why not?

(c) See ¶14(c), *supra*.

18.

(a) Defendants allege that the Superintendent of the New Orleans Police Department, by letter dated February 18, 1975, "declined to eliminate the height requirement." SA 5.

(b) Had the defendants yet determined the Department to be in noncompliance? Did defendants make a determination of noncompliance immediately thereafter? If not, why not?

(c) See ¶14(c), *supra*.

19.

(a) Defendants allege that in January, 1975 they received two additional complaints of sex discrimination, that they were advised in February, 1975 that these complainants were also plaintiffs in pending litigation, and that the defendants "subsequently suspended conciliation efforts pending the litigation." SA 5, 6.

(b) Had defendants yet determined the Department to be in noncompliance? When did the defendants suspend conciliation efforts? Why did defendants suspend conciliation efforts? On what authority did defendants suspend their constitutional and statutory civil rights obligations?

(c) See ¶14(c), *supra*.

20.

(a) Defendants allege that in October of 1975 they again "requested that the New Orleans Police Department cease utilizing the height requirement." SA 6.

(b) Why did defendants reinstitute their civil rights activities after twice deferring to litigation earlier? Had defendants yet made a determination of noncompliance? Had defendants initiated the statutorily mandated fund termination proceedings? Did defendants continue to provide LEAA funding and to award LEAA grants to the New Or-

leans Police Department during the various years of their civil rights actions? If so, why? Was the filing of this lawsuit against defendants a cause of defendants' reinstatement of their threat to terminate funding?

(c) See ¶14(c), *supra*.

21.

(a) Defendants allege that a March 6, 1975 complaint against the Wayne County Sheriff's Department "was docketed." SA 7.

(b) When was the complaint docketed? Was there ever an investigation on the basis of this complaint? Was there a determination of noncompliance? If not, why not?

(c) Pl 1st I & RA ¶ 13–14, 17–19, 74–87; Pl 1st RPD ¶¶1, 5–6; Pl 2nd I ¶¶14–17, 33–41, 46; Booth Affidavit; Civil Rights Comm. pp. 369–393.

22.

(a) Defendants allege that in September, 1975, more than two months after the entry of a preliminary injunction against the Wayne County Sheriff's Department, they chose to "defer" to the jurisdiction of that court and to "review the orders of the court" in order "to secure compliance." SA 8.

(b) Did defendants ever review the orders of that court? If such a review was ever undertaken, did defendants determine noncompliance? Do defendants have any written documents concerning their review?

(c) See ¶21(c), *supra*.

23.

(a) Defendants allege that in October, 1975, subsequent to deferral, they requested the Wayne County Sheriff's Department to provide them with the Department's EEOP, and that in the EEOP which was received by the defendants, "several essential items were lacking" including "the components of the department's selection and promotion processes, and breakdowns, by race, sex, and national ori-

gin, of its applicant flow, transfers, and disciplinary actions." SA 8, 9.

(b) Why, subsequent to deferral, did defendants request the EEOP? Did the defendants determine from the EEOP that the Department was in noncompliance? If not, why not? How much LEAA funding had the defendants provided to the Department?

(c) See ¶21(c), *supra;* See also Larson Affidavit.

24.

(a) Defendants allege that they received a sex discrimination complaint involving the use of height requirements by the Honolulu Police Department in December, 1972 and that in January, 1973 the Honolulu Police Department "responded and submitted data to [defendants] which indicated that sex was, in fact, a consideration in assignments and promotions." SA 10.

(b) Did the Department's response admit noncompliance? Did the defendants determine noncompliance?

(c) Pl 1st I &RA ¶¶13–14, 16, 20, 164–170; Pl 1st RPD ¶1, 5–6; Pl 2nd I ¶¶14–17, 27–28, 33–41, 43–44, 46; Pl 2nd RA ¶¶1, ¶6; McAllister Affidavit; Civil Rights Comm. pp. 369–393.

25.

(a) Defendants allege that their next contact with the Honolulu Police Department occurred in May, 1973 and in January, 1974 when defendants attempted "to reach an accord in the matter." SA 11.

(b) Why did the defendants wait one year until again contacting the Department? Did the defendants determine noncompliance?

(c) See ¶24(c), *supra.*

26.

(a) Defendants allege that in May, 1974 they deferred their actions with regard to the Honolulu Police Department to the EEOC. SA 11.

(b) Why, after a year-and-a-half, did the defendants defer to the EEOC? Had the defendants made a determination of noncompliance against the Honolulu Police Department?

(c) See ¶24(c), *supra*.

27.

(a) Defendants allege that subsequent to the EEOC's failure of conciliation with the Honolulu Police Department, defendants again, a year later, in April, 1975, attempted "to further resolve the issues" of the Honolulu Police Department's sex discrimination. SA 12.

(b) Had defendants yet made a determination of noncompliance? If not, why not?

(c) See ¶24(c), *supra*.

28.

(a) Defendants allege that on August 26, 1975 they advised the Governor of Hawaii that "the Honolulu Police Department was not in compliance." SA 13.

(b) When did defendants make their determination of noncompliance? Why did defendants not defer to the lawsuit which had been filed one month earlier against the Honolulu Police Department charging sex discrimination, *McAllister v. Honolulu*, Civ. No. 75–248. (D. Haw. filed July 17, 1975)? Were defendants aware from the banner headline in the Hawaii Star-Bulletin newspaper on August 22, 1975, that they were about to be sued in this action for their failure to enforce their civil rights mandate against the Honolulu Police Department? Why didn't defendants request the Governor of Hawaii to secure compliance? How much LEAA funding had the defendants provided to the Honolulu Police Department during its years of noncompliance?

(c) See ¶24(c), *supra;* see also Larson Affidavit.

29.

(a) Defendants allege that they received a complaint of sex discrimination against the Philadelphia Police Depart-

ment on August 4, 1973 and that in November, 1973 they contacted the Civil Rights Division "about the possibility of referring [the] complaints to the Division for suit." SA 13–16.

(b) Had defendants made a determination of noncompliance against the Philadelphia Police Department? On what basis did the defendants have authority to refer such a complaint to the Civil Rights Division?

(c) Pl 1st I & RA ¶¶13–14, 17–22, 88–119; Pl 1st RPD ¶¶1–7; Pl 2nd I ¶¶14–17, 21–26, 29–41, 43–44, 46; Pl 2nd RA¶¶1–7; Preliminary Injunction Motion pp. 1–68, 126–134; Civil Rights Comm. pp. 369–393, 77.

30.

(a) Defendants allege that complainant Penelope Brace had been harassed and retaliated against, and that on January 17, 1974 defendant Rice "wrote to [Philadelphia Police] Commissioner O'Neill, advising him that the regulations enforcing Title VI of the Civil Rights Act of 1964 specifically prohibit retaliation against a complaint." SA 17.

(b) Did defendants determine the Philadelphia Police Department to be in noncompliance because of its harassment and retaliation in violation of defendants' regulations? If not, why not?

(c) See ¶29(c), *supra*.

31.

(a) Defendants allege that on February 1, 1974 defendant Rice telegrammed to the Philadelphia Police Department that "LEAA has determined that the Philadelphia Police Department has failed to comply with the LEAA Equal Employment Opportunity Regulations, 28 C.F.R. 42.201 *et seq.*, Subpart D. The LEAA has further determined that compliance with these regulations cannot be achieved by voluntary means," and that the matter had been referred to the Civil Rights Division. SA 18.

(b) Did defendants request the Governor of Pennsylvania to secure compliance from the Philadelphia Police Department prior to defendants referral of this matter to the Civil

Rights Division? If not, why not? Did the defendants at this stage commence their statutorily mandated proceedings to terminate funding to the Philadelphia Police Department? If not, why not?

(c) See ¶29(c), *supra*.

32.

(a) Defendants allege that complainant Brace was suspended by the Philadelphia Police Department on February 15, 1974, that "this action by the department violated the assurances given by [the Philadelphia Police Department] to [defendant Rice] on December 4, 1973, and to the Civil Rights Division on January 29, 1974," and that the Civil Rights Division subsequently filed a federal court lawsuit against the Philadelphia Police Department. SA 18–19.

(b) Did defendants determine that the Philadelphia Police Department's actions were in noncompliance? If not, why not? Did defendants initiate their mandatory administrative proceedings to terminate funding to the Philadelphia Police Department? If not, why not?

(c) See ¶29(c), *supra*.

33.

(a) Defendants allege that in March, 1974 they approved two one million dollar LEAA grants to the Philadelphia Police Department and that in April, 1971 they approved an additional LEAA grant to the Philadelphia Police Department. SA 19.

(b) On what basis and authority did defendants determine that they could award LEAA funding to the Philadelphia Police Department subsequent to their February, 1974, "determination" of noncompliance? What other grants during this period did LEAA approve for the Philadelphia Police Department?

(c) See ¶29(c), *supra*.

34.

(a) Defendants allege that at an unstated time they "sought guidance from the Office of Legal Counsel, Depart-

ment of Justice," about such matters as the defendants' "preference for judicial over administrative sanctions in LEAA's Equal Employment Opportunity Regulations, originally promulgated December 31, 1970 and reissued on August 9, 1972, 28 C.F.R. 42.201." SA 20.

(b) When were these matters discussed? What was the nature of the conversations that were held? Was it determined by defendants at that time that their regulation preferring judicial over administrative sanctions was illegal under Section 518(c)? Did defendants thereafter immediately amend their illegal regulation? If not, why not? Did the defendants at this time decide to follow the statute rather than their illegal regulation and to commence fund termination proceedings against the Philadelphia Police Department?

(c) See ¶29(c), *supra*.

35.

(a) Defendants allege that in a letter to Congressman Rangel dated January 9, 1975 they stated that whenever the defendants determine that the recipient is not in compliance with Section 518(c) or with defendants' regulations, defendants are required to request the Governor of the state to secure compliance and if that fails, defendants are "required" to initiate their administrative hearings under Section 509 of the Act. SA 21.

(b) Why did the defendants fail to follow this interpretation and to initiate statutory fund termination proceedings against the Philadelphia Police Department? Why did defendants fail to follow this interpretation and to amend their illegal regulation preferring judicial rather than administrative enforcement?

(c) See ¶29(c), *supra*.

36.

(a) Defendants allege that they thought it undesirable to initiate fund termination proceedings against the Philadelphia Police Department because of "the disruption that would be involved in fund cut-off; and uncertainty at that

time as to the extent to which employment discrimination is covered by Section 518(c)." SA 21.

(b) On what basis and authority do defendants have reason to consider "the disruption that would be involved in fund cut-off"? Were defendants aware that employment discrimination was prohibited by defendants own regulations, 28 C.F.R. § 42.204, 37 Fed. Reg. 16671 (August 18, 1972), and 28 C.F.R. §§ 42.301 *et seq.*, 38 Fed.Reg. 23516 (August 31, 1973)?

(c) See ¶29(c), *supra*.

37.

(a) Defendants allege that in their letter to Congressman Rangel they also stated that more important than following their statutory mandate by cutting off funding to the Philadelphia Police Department, "the impact upon all citizens of Philadelphia of withdrawing the additional police protection being provided was deemed to be on balance of more immediate consequence." SA 22.

(b) On what basis and authority do defendants claim that they can violate their statutory mandate to initiate administrative proceedings to terminate funding—on such grounds as alleged above?

(c) See ¶29(c), *supra*.

38.

(a) Defendants allege that in September, 1974 they informed the Philadelphia Police Department "that the department . . . had sixty days to prepare EEOP's meeting the requirements of Subpart E of the LEAA Equal Employment Opportunity Regulations," and that they sent to the Police Department "a list of deficiencies in the police department's current EEOP." SA 22.

(b) Did the defendants at this point determine that the Philadelphia Police Department was in noncompliance? If not, why not?

(c) See ¶29(c), *supra*.

39.

(a) Defendants allege that on "January 28, 1976, LEAA informed Governor Milton Shapp of Pennsylvania of its determination that the Philadelphia Police Department is in noncompliance with Section 518(c)(1) of the Crime Control Act and Subpart D of the LEAA EEOP regulations." SA 27.

(b) Why did defendants wait two years after their February 1, 1974 "determination" of noncompliance to request the Governor of Pennsylvania to secure compliance? Was defendants' request to the Governor of Pennsylvania, two years after defendants' determination, made in direct response to the preliminary injunction motion served in this case upon the defendants on January 14, 1976? Why did defendants refuse to make such a request to the Governor of Pennsylvania for the two years preceding the request which was finally made? Had defendants in fact made an earlier request of the Governor of Pennsylvania? How much LEAA funding had been provided by the defendants to the Philadelphia Police Department during this two year period of their illegally refusing to initiate fund termination procedures?

(c) See ¶29(c), *supra*.

40.

(a) Defendants allege that in April, 1973 they received a complaint of discrimination against 19 cities in California, and that they decided in April or May, 1973 that only three of the respondent cities would be investigated by the defendants. SA 29–30.

(b) On what basis did the defendants decide to conduct investigations of only three of the respondent police departments? Had defendants received any previous complaints of discrimination against any of the respondents? Had defendants made any previous investigations or determinations of noncompliance? Did defendants consider themselves to be constitutionally and statutorily mandated to make determinations of compliance or noncompliance with regard to all

19 California police departments, or only with regard to one-third of all respondents?

(c) Pl 1st I & RA ¶¶9–16, 20, 21–22, 42–73; Pl 1st RPD ¶¶1–6; Pl 2nd I ¶¶1–26, 33–41, 43–44, 46; Pl 2nd RA ¶¶1, 6, 8–9; McKinney Affidavit; Preliminary Injunction Motion pp 1–6, 69–125, 139–142; Civil Rights Comm. pp 348–393, 777.

41.

(a) Defendants allege that one of the three police departments which they selected for review was the San Francisco Police Department, although they had been advised by complainants' counsel that the San Francisco Police Department had just been sued for employment discrimination. SA 31.

(b) On what grounds did the defendants in this instance choose not to defer to the litigation that had been commenced against the San Francisco Police Department? See, *Officers for Justice v. Civil Service Commission of San Francisco*, 371 F.Supp. 1328 (N.D. Cal. 1973) and 395 F.Supp. 378 (N.D. Cal. 1975). How much LEAA funding have defendants provided to the San Francisco Police Department?

(c) See ¶40(c), *supra*.

42.

(a) Defendants allege that on December 12, 1973 defendant Rice met with the Chief of the San Diego Police Department "to discuss the results of the review" conducted by defendants, and that on April 2, 1974 defendants forwarded a letter "of recommendation" to the San Diego Police Department. SA 32.

(b) What were "the results" of defendants' review of the San Diego Police Department? Did defendants determine the San Diego Police Department to be in noncompliance? What was the "recommendation" which was sent to the San Diego Police Department in April, 1974? Did defendants make a determination of noncompliance? Did defendants request the Governor of California to secure compliance?

How much LEAA funding have defendants provided to the San Diego Police Department?

(c) See ¶40(c), *supra*.

43.

(a) Defendants allege that a subsequent review of the San Diego Police Department's EEOP "indicated several areas of concern" and that in November, 1975, defendants informed the San Diego Police Department about "these problem areas." SA 33–34.

(b) What were these "areas of concern" and "problem areas?" Did defendants determine the San Diego Police Department to be in noncompliance?

(c) See ¶40(c), *supra*.

44.

(a) Defendants allege that on November 21, 1975 they "requested the EEOP of all of the 19-cities police departments which [they] had not yet received." SA 32.

(b) To how many of the 19 police departments was that request sent? Why did defendants wait more than a year-and-a-half after the filing of the complaint to finally attempt to obtain the EEOPs? Did defendants make determinations of noncompliance against any of those police departments? Did defendants commence administrative proceedings to terminate LEAA funding to any of those police departments?

(c) See ¶40(c), *supra*.

45.

(a) Defendants allege that the EEOP of the Berkeley Police Department, which was received in August, 1975, "was not complete and additional information on the selection process is being requested." SA 34.

(b) What aspects of that EEOP were not complete? Did defendants determine the Police Department to be in noncompliance? If not, why not? Did defendants ever initiate administrative proceedings to terminate funding to the

Berkeley Police Department? How much LEAA funding have defendants given to the Berkeley Police Department?

(c) See ¶40(c), *supra*.

46.

(a) Defendants allege that they received a complaint against the San Jose Police Department and that they have been "deferring administrative action in this case during the judicial proceeding." SA 35.

(b) When was the LEAA complaint filed against the San Jose Police Department? Why have defendants deferred administrative proceedings in this case when they declined to defer administrative proceedings with regard to the San Francisco litigation? Have defendants determined the San Jose Police Department to be in noncompliance? Is the San Jose Police Department in noncompliance? How much funding have defendants provided to the San Jose Police Department?

(c) See ¶40(c), *supra*.

47.

(a) Defendants allege that in November, 1975 they informed the Los Angeles Police Department that its EEOP "disclosed certain areas of concern." SA 35.

(b) What are those "areas of concern?" Have defendants determined the Los Angeles Police Department to be in noncompliance? Why have defendants not deferred to the litigation that is pending against the Los Angeles Police Department? See, *Blake v. Los Angeles*, Civ. No. 73-1962-WMB (S.D. Cal. filed 1973). How much LEAA funding have defendants provided to the Los Angeles Police Department?

(c) See ¶40(c), *supra*.

48.

(a) Defendants allege that "the EEOP of the Hayward Police Department was evaluated and found to be inadequate." SA 36.

(b) In what ways was the EEOP "found to be inadequate?" Did defendants make a determination of noncompliance? Did defendants initiate their administrative proceedings to terminate their LEAA funding to the Hayward Police Department? How much LEAA funding have defendants awarded to the Hayward Police Department?

(c) See ¶40(c), *supra*.

49.

(a) Defendants allege that on November 21, 1975 they requested the EEOPs of the Police Departments of Fresno, Glendale, Huntington Beach, Stockton, Pasadena, Sacramento, San Bernadino, Fremont, Sunnydale, and Inglewood, California, each of which had been named as a respondent in the complaint filed more than a year-and-a-half previously. SA 36.

(b) Why did defendants wait one-and-a-half years to request the EEOPs of the foregoing respondent police departments. Have defendants made any determinations of noncompliance against those police departments? How much LEAA fundings have defendants provided to those police departments?

(c) See ¶40(c), *supra*.

50.

(a) Defendants allege that, in response to a complaint against the Richmond Police Department, they advised the complainant that they were "deferring investigation until a final resolution was reached by the court." SA 37.

(b) On what grounds did defendants defer to the litigation pending against the Richmond Police Department when they refused to defer to the litigation pending in the same federal court against the San Francisco Police Department? On what basis and authority did defendants defer their statutory civil rights obligations? How much LEAA funding have defendants provided to the Richmond Police Department?

(c) See ¶40(c), *supra*.

51.

(a) Defendants allege that in June, 1974 defendant Rice attended a "presentation" of the California Fair Employment Practices Commission's "review" of the Oakland Police Department, and that defendants in September, 1975, apparently after conducting their own investigation, prepared "a final case summary" of defendants' "finding" of noncompliance by the Oakland Police Department. SA 37–39.

(b) What was the nature of the "presentation" by the California FEPC? Did that "presentation" indicate that the Oakland Police Department was in noncompliance? Did defendants make a determination of noncompliance? After defendants had conducted their own investigation, and prepared "a final case summary," did defendants make a determination of noncompliance? Have defendants initiated administrative proceedings to terminate their LEAA funding to the Oakland Police Department? How much LEAA funding have defendants provided to the Oakland Police Department?

(c) See ¶40(c), *supra*; see also Larson Affidavit.

52.

(a) Defendants allege that they received complaints of discrimination against the Indiana State Police Department on August 14, and August 26, 1975; that they were aware of the July 31, 1975 Federal Court Decision *Bailey v. DeBard*, No. IP 74–458–C (S.D. Ind., July 31, 1975) declaring to be discriminatory and unlawful the Department's use of its written tests, and promotion procedures, and recruitment, and finding that its EEOP had never been implemented; but that defendants refused to take any action with regard to the Department. SA 40–41.

(b) On what grounds did defendants refuse to take any action against the Department, especially in view of the court's specific holding that the Department had violated 42 U.S.C. "3766(c) and the [LEAA] regulations promulgated thereunder as Title 28 C.F.R. Sections 42.201–42.206 and 42.301–42.308?" Did the court's opinion indicate to defend-

ants that the Department was in noncompliance? Did defendants make a determination of noncompliance? Did defendants request the Governor of Indiana to secure compliance? If not, why not? Did defendants ever initiate their statutory fund termination procedures? How much LEAA funding have defendants provided to the Department?

(c) Pl 1st I & RA ¶¶13–16, 21, 25, 27–41, 191; Pl 1st RPD ¶¶1–6; Pl 2nd I ¶¶14–17, 21–26, 33–44, 46; Pl 2nd RA ¶¶1, 10; Bailey Affidavit; Larson Affidavit; Preliminary Injunction Motion, pp. 91–116; Civil Rights Comm. pp. 369–393, 777.

53.

(a) Defendants also allege that previously in November, 1974, they had "confirmed" indications that the Indiana State Police Department's EEOP was "deficient." SA 41.

(b) What were these deficiencies? The defendants determine the Department to be in noncompliance. Did defendants request the Governor of Indiana to secure compliance? Did defendants initiate their statutory fund termination procedures?

(c) See ¶52(c), *supra*.

54.

(a) Defendants allege that in January, 1973, subsequent to their compliance review of the Portland Police Bureau, they imposed "eight requirements" upon the Bureau. SA 43.

(b) What was the nature and depth of the discrimination which caused defendants to impose "eight requirements" on the Bureau? Are there any documents prepared by defendants indicating the scope of the Bureau's noncompliance? Did defendants determine the Bureau to be in noncompliance? Did defendants request the Governor of Oregon to secure compliance? Did the defendants initiate their statutory fund termination procedures? How much LEAA funding have defendants provided to the Bureau?

(c) Pl 1st I & RA ¶¶10–12, 15, 20, 149–163; Pl 1st RPD ¶¶1, 5–7; Pl 2nd I ¶¶5–12, 18–26, 33–38, 43–44, 46; Pl 2nd RA ¶¶1, 6–7; Orazetti Affidavit; Ledyard Affidavit; Larson Affidavit; Preliminary Injunction Motion pp 91–116; Civil Rights Comm., pp 348–393.

55.

(a) Defendants also allege that two years later, in December, 1974, defendants requested the Portland Police Bureau to submit "for review" "an Equal Employment Opportunity Program (EEOP) in accordance with 28 CFR 42.301 *et seq.*" SA 45.

(b) Were defendants aware of whether the Bureau actually had an EEOP? If there was an EEOP in existence at that time, had defendants found that EEOP to be *not* "in accordance with 28 C.F.R. 42.301 *et seq*?" Did defendants determine the Bureau to be in noncompliance? Are there any documents prepared by defendants indicating such noncompliance? Did defendants initiate their statutory fund termination procedures?

(c) See ¶54(c), *supra*.

56.

(a) Defendants allege that "plaintiffs Orazetti and Ledyard [Portland police officers] were interviewed by members of [defendants'] review team during the on-site visit; and that it "never has been the policy of [defendants] to discourage the filing of complaints of discrimination." SA 47.

(b) Who were the members of the review team? Did any of those members advise plaintiffs Orazetti and Ledyard that the filing of complaints was unnecessary, that such filing would do no good, and that defendants would never terminate their LEAA funding to any recipient?

(c) See ¶54(c), *supra*.

47.

(a) Defendants allege that in June, 1975, they made a "finding" "that the Detroit Police Department's EEOP was

not in compliance with LEAA guidelines," and that in August, 1975, "recommendations" were sent to the Police Department. S 16.

(b) What were the nature and scope of the Department's noncompliance and of defendants' recommendations? Did defendants request the Governor of Michigan to secure compliance? Did defendants initiate their statutory fund termination proceedings? How much LEAA funding have defendants provided to the Department?

(c) See ¶¶6(c) and 10(c), *supra*; see also Larson Affidavit.

58.

(a) Defendants allege that in January, 1975, defendant Velde "was apprised of the fact that the cities of Pittsburgh and McKeesport had failed to complete an EEOP covering the local Police Departments as required." S 36. See also Velde Affidavit ¶18.

(b) Did defendant Velde determine that the Pittsburgh and McKeesport Police Departments had merely failed "to complete" an EEOP as required or did defendant Velde actually determine that the Departments had failed to formulate any EEOP, much less implement one, as required by defendants' regulations? Did defendants request the Governor of Pennsylvania to secure compliance? Did defendants initiate statutory fund termination proceedings? How much LEAA funding have defendants provided to the Departments?

(c) See ¶¶6(c) and 10(c), *supra*.

59.

(a) Defendants allege that in February, 1975 defendant Velde "became aware of a non-compliance matter involving the Police Department of St. Louis." S 35. See also Velde Affidavit. ¶17.

(b) What were the nature and scope of the Department's noncompliance as determined by defendant Velde? Did defendants request the Governor of Missouri to secure compliance? Did defendants initiate statutory fund termination

proceedings? How much LEAA funding have defendants provided to the St. Louis Police Department?

(c) Pl 1st RPD ¶6; Pl 2nd I ¶18–26; Pl 2nd RA ¶1; Larson Affidavit; Civil Rights Comm. pp 332–393.

60.

(a) Defendants allege that on an unspecified date a "comprehensive report" on the complainant practices of the Chicago Police Department was issued indicating that the Department "appeared to be engaging in unlawful discriminatory employment practices." S 18.

(b) What is the date of that "comprehensive report?" Does the report contain findings or determinations of noncompliance? Did defendants make a determination of noncompliance? Did defendants ever request the Governor of Illinois to secure compliance? Did defendants ever initiate their statutory fund termination proceedings? How much LEAA funding have defendants awarded to the Chicago Police Department?

(c) Pl 1st I & RA ¶188; Pl 1st RPD ¶1; see also ¶¶1(c) and 2(c), *supra*.

61.

(a) Defendants also allege that a lawsuit entitled *United States v. City of Chicago* "led to the withholding of all general revenue sharing funding to the City of Chicago until the City comes into civil rights compliance." S 18.

(b) Hasn't revenue sharing been upheld not pursuant to the good offices of the Office of Revenue Sharing or of the United States but as a result of court orders in the private enforcement lawsuit filed against the Office of Revenue Sharing?

(c) See *Robinson v. Shultz*, 7 E.P.D. ¶9270 (D.D.C. 1974), *supplemental order*, 8 E.P.D. ¶9832 (D.D.C. 1974), *stay denied*, 9 E.P.D. ¶9861 (D.D.C. 1975), *order confirmed*, 395 F.Supp. 329 (N.D. Ill. 1975), *permanent order*, ___ F. Supp. ___, 11 E.P.D. ¶10,597 (N.D. Ill. 1976). See also ¶60(c), *supra*.

Dated: Washington, D.C.
March 24, 1976

E. RICHARD LARSON
KATHLEEN WILLERT PERATIS
American Civil Liberties Union Foundation
22 East 40th Street
New York, New York 10016
(212) 725-1222

MELVIN L. WULF
American Civil Liberties Union
410 First Street, S.E.
Washington, D.C. 20003
(202) 544-1681

WILLIAM E. CALDWELL
Lawyers Committee for Civil Rights Under Law
733 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 628-6700

T. MICHAEL PEAY
PAUL R. DIMOND
Lawyers' Committee for Civil Rights Under Law
733 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 628-6700

ATTORNEYS FOR PLAINTIFFS

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civ. No. 75–1444
Judge Corcoran

NATIONAL BLACK POLICE ASSOCIATION, INC., PLAINTIFFS,

v.

RICHARD W. VELDE, ET AL., DEFENDANTS

AFFIDAVIT

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

E. RICHARD LARSON, being first duly sworn, deposes and says:

1. I am one of the attorneys for the plaintiffs in the above-styled action. I submit this affidavit pursuant to Rule 56(f) of the Federal Rules of Civil Procedure in opposition to defendants' Motion for Summary Judgment.

2. In support of their Motion for Summary Judgment, defendants filed a four-paragraph, one-and-a-half-page Statement of Material Facts; plaintiffs contend that defendants Statement of Material Facts sets forth no material facts. Defendants also filed affidavits of each of the individual defendants; plaintiffs contend that defendants' affidavits are conclusory and set forth no material facts upon which summary judgment could be entered. Defendants also filed a 94-page, unsworn and uncertified Statement of Reasons and Appendix; plaintiffs contend that this compilation of allegations is inadmissible under Rule 56(e) of the Federal Rules of Civil Procedure and thus may not be utilized by the parties or by the Court on a motion for summary judgment.

3. To the extent, however, that this Court views any of the above documents or allegations as setting forth any material facts, plaintiffs contend that summary judgment must be denied under Rule 56(f) of the Federal Rules of Civil Procedure on the grounds that defendants have not responded to any of plaintiffs' discovery and that plaintiffs accordingly are unable to present sufficient sworn and admissible evidence in opposition to defendants' allegations.

4. This action concerns plaintiffs' claims that defendants have provided millions of dollars of unabated LEAA funding to discriminatory law enforcement agencies in violation of defendants' constitutional and statutory duties. The issues raised by this action are thus issues concerning the defendants' actions and inactions. Resolution of these issues depends upon facts, knowledges, motivations, and circumstances which are exclusively in defendants' control.

5. Plaintiffs have diligently sought to discover these facts, knowledges, motivations and circumstances from defendants. On September 11, 1975, one week after this action was filed, plaintiffs served the following discovery on defendants: (1) Plaintiffs' First Interrogatories and First Request for Admissions; (2) Plaintiffs' First Request for Production of Documents; (3) Plaintiffs' Second Interrogatories; and (4) Plaintiffs' Second Request for Admissions.

6. Defendants reacted to the aforementioned discovery first by obtaining an extension from the plaintiffs and later, on November 4, 1975, by filing a Motion for a Protective Order Staying Discovery. On November 14, 1975, plaintiffs filed an Opposition to Defendants' Motion. In this Court's Order of December 22, 1975, this Court granted plaintiffs' unopposed motion to drop a plaintiff, and plaintiffs were required to file an amended complaint by January 5, 1976; paragraph four of this Court's Order further stated that "All proceedings herein are stayed except as provided for in this Order." On January 2, 1976, plaintiffs filed their Amended Complaint.

5. On January 14, 1976, plaintiffs served (along with their Motion for a Preliminary Injunction and a Writ of Mandamus) a Motion to Vacate the Stay on Answering Pre-

vious Discovery in this Action. That Motion is still pending before this Court.

6. On January 14, 1976, plaintiffs also served a Notice of Deposition for the purposes of deposing defendant Herbert C. Rice, the Director of defendant LEAA's Office of Civil Rights Compliance. The deposition was noticed for January 27, 1976. On January 23, 1976, I spoke by telephone with Nathan Dodell, one of the attorneys for defendants, and was advised that defendant Rice would not appear for the deposition noticed by plaintiffs on the grounds that defendants understood this Court's Order of December 22, 1975 to have stayed defendants' responses to *all* of plaintiffs' past *and future* discovery. This telephone conversation was confirmed by letter dated January 23, 1976 from defendants' counsel. [See Exhibit A attached hereto.] Defendant Rice did not appear on January 27, 1976 for his noticed deposition.

7. The discovery filed to date by plaintiffs, if answered by defendants, would go a good way toward establishing the facts, knowledges, motivations and circumstances, which are exclusively in defendants' control and which are material to the issues in this case. In the Statement of Genuine Issues filed herewith, plaintiffs have indicated those portions of plaintiffs' September 11, 1975 discovery which are material to defendants' allegations and to the genuine issues raised by those allegations. Depositions of each of the individual defendants and of various of their employees and subordinates are also necessary to establish the facts, knowledges, motivations and circumstances which are exclusively in defendants' control and which are material to the issues in this case.

/s/ _____
E. RICHARD LARSON

Sworn to before me this 22nd day of March, 1976

/s/ _____
BELLA GREEN
Notary Public

LARSON AFFIDAVIT
EXHIBIT

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES ATTORNEY
Washington, D.C. 20001

23 January 1976

William E. Caldwell, Esquire
Lawyers Committee for Civil
Rights Under Law
733 Fifteenth Street, N.W.
Washington, D.C. 20005

Re: *National Black Police Association, et al.* v. *Richard W. Velde, et al.* Civil Action Number 75–1444

Dear Mr. Caldwell:

This is in reference to the Notice of Deposition of Herbert C. Rice, mailed January 14, 1976 and received by us January 19, 1976. We have the following comments:

1. By order of December 22, 1975, the Court stayed proceedings in this action. That stay is still in effect. Accordingly, the notice of deposition is without force and effect.

2. The continued effectiveness of the stay is confirmed by the fact that plaintiffs' counsel have deemed it necessary to move to vacate the stay (by motion mailed and received with the notice of deposition).

3. There is outstanding our motion for a protective order, which includes all discovery in this action. That motion has not been reached because of the interval that resulted from your violation of Rule 8(a) of the Federal Rules of Civil Procedure and the necessity that plaintiffs replead, as found and ordered by Judge Corcoran.

4. At the time that we respond to the motion to vacate the stay, we will supplement our motion for a protective order to expressly refer to the notice of deposition. Incidentally, at present the time to respond to the motion to vacate the stay does not expire until January 27, 1976, the very same day for which plaintiffs' counsel noted the deposition.

5. Plaintiffs previously have requested production of documents, and the defendants have moved for a protective order, which is pending. Now plaintiffs again request production of documents in the notice of deposition, prior to resolution of the motion for a protective order. Moreover, the request does not even conform to Rule 34 in seeking production earlier than the thirty day period specified in the Rule.

In view of the foregoing, defendant Rice will not appear for the deposition noted by plaintiffs' counsel.

One final word: it continues to seem to us that plaintiffs' counsel are not conducting this matter in such a manner as to lead to its orderly resolution. We have been seeking to prepare a timely response to plaintiffs' wide-ranging pleadings in this case, including the latest amended complaint. (Indeed, while the new complaint improves upon that found in violation of Rule 8(a) its 112 paragraphs and 36 pages still indicate that plaintiffs do not fully appreciate either the meaning of Rule 8(a) or the direction of Judge Corcoran).

During this period of our preparation, and when our papers will shortly be due (February 2, 1976), plaintiffs have sought to take a deposition while the stay is in effect. And they have served upon us a belated motion for preliminary injunction, mailed January 14, 1976, more than four months after institution of suit, accompanied by voluminous documentation. We wish to help resolve this matter in an orderly manner. Plaintiffs counsel do not appear to be assisting in that effort.

While Nathan Dodell of this office was preparing this letter on Friday morning January 23, 1976, he was telephoned by E. Richard Larson, Esq., one of plaintiffs' attorneys. Mr. Dodell advised Mr. Larson that because of the stay and the outstanding motion for a protective order Mr. Rice would not appear and that a letter would be sent to plaintiffs' counsel stating our position.

Sincerely,

EARL J. SILBERT
United States Attorney

By:

ROBERT N. FORD
Chief, Civil Division

cc: E. RICHARD LARSON, ESQ.
American Civil Liberties Union Foundation
22 East 40th Street
New York, New York 10016

MELVIN L. WULF, ESQ.
American Civil Liberties Union
410 First Street, S.E.
Washington, D.C. 20003

JOHN KELSON, ESQ. (2 copies)
Civil Division
Department of Justice

cc: THOMAS MADDEN, ESQ.
General Counsel
Law Enforcement Assistance Administration
Room 1268
633 Indiana Avenue, N.W.
Washington, D.C. 20531

HERBERT RICE, ESQ.
Office of Civil Rights Compliance
Law Enforcement Assistance Administration
416 - 5th Street, N.W.
Washington, D.C. 20531

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

---

75 Civ. 1444
Judge Corcoran

NATIONAL BLACK POLICE ASSOCIATION, ET AL.,
PLAINTIFFS,

v.

RICHARD W. VELDE, ET AL., DEFENDANTS.

AFFIDAVIT

State of Indiana)
) ss.
County of Lake)

BRUCE BAILEY, being duly sworn, deposes and says:

1. I am a named plaintiff in the above-entitled case.

2. I am a black citizen of the United States and a resident of Gary, Indiana.

3. I have been twice denied employment by the Indiana State Police Department.

4. As of August, 1974, the Indiana State Police Department employed 937 uniformed state troopers and higher ranking oficers, of whom three (or .32%) were black. Currently, there are only three black state troopers. According to the 1970 census, the population of the State of Indiana was 6.9% black.

5. In the history of the Department, only four blacks have been employed as state troopers. Only one black trooper has ever been promoted above the entry-level rank of state trooper. No women have ever been employed as state troopers by the Department.

6. For the past decade, all applicants for employment as a state trooper have been required to achieve an arbitrarily determined passing score on a written examination, the Otis Gamma C test. On the last two occasions that the test was administered the state trooper applicants, blacks were effectively eliminated. In 1974, 57% of the white applicants passed while 0% of the black applicants passed; in 1973, 57% of the white applicants passed while only 29% of the black applicants passed. The Otis Gamma C test has never been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the job of state trooper.

7. State troopers who seek promotion to a command position must have five years' service with the Department, and must pass an oral interview based upon an evaluation of the trooper's record. Neither of the requirements has been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for any command position. Moreover, the Department has limited the breadth of experience of the few black troopers through discriminatory assignments, hereby limiting the promotion opportunities of the black troopers.

8. The Indiana State Police Department has never engaged in any formal recruitment programs directed at recruiting black applicants. The primary means of recruitment has been through the posting of civil service notices and word-of-mouth recruitment.

9. In May, 1972, I applied for employment as a state trooper with the Indiana State Police Department. In August, 1972, I took the written examination, and shortly thereafter I was notified by the Department that I had not passed the examination.

11. On August 29, 1974, the Indiana State Conference of Branches of the NAACP and I filed a class action complaint in the United States District Court for the Southern District of Indiana alleging unlawful race discrimination in violation of 42 U.S.C. § 1981 and § 1983, § 1985(3), § 1988, §§ 2000d *et seq.*, and § 3755(c) against the Indiana State Police Department and various of its officials, *Bailey v. De-*

Bard, No. IP 74–458–C (S.D. Ind., filed Aug. 26, 1974). On November 6, 1974, I received a right-to-sue notice from the United States Department of Justice. Shortly thereafter, I amended my complaint to allege unlawful discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e *et seq.*

12. On or about October 15, 1974, less than two months after the filing of my complaint in *Bailey v. DeBard*, *supra*, the Indiana State Police Department commenced a training school for a new class of state troopers to fill 52 newly authorized state trooper positions. The entire class of new state troopers was white.

13. On July 31, 1975, the Court in *Bailey v. DeBard*, *supra*, issued a Memorandum Opinion and Judgment declaring unlawful the Department's use of its written tests, the Department's promotion procedures, and the Department's failure to recruit black troopers. The Court specifically held the Department and its officials to be in violation of the Thirteenth and Fourteenth Amendments and of 42 U.S.C. §§ 1981, 1983, 1985(3), 1988, 2000d *et seq.*, 2000e *et seq.* "and 3766(c) and the regulations promulgated thereunder as Title 28 C.F.R. Sections 42.201–42.206 and 42.301–42.308." [A certified copy of the Court's Memorandum Opinion and Judgment is attached hereto as Exhibit A].

14. In its Memorandum Opinion and Judgment, the Court noted that the Superintendent of the State Police Department, on July 1, 1974, had certified that the Department intended to formulate an Equal Employment Opportunity Program in accordance with the LEAA regulations, 28 C.F.R. §§ 42.301 *et seq.*, but that the EEOP had never been financed much less implemented.

15. In its Memorandum Opinion and Judgment, the Court issued only declaratory relief. The Court set October 1, 1975, as the trial date to determine the nature of the injunctive relief which should be ordered.

16. In August, 1975, I filed a charge of discrimination with LEAA and enclosed a copy of the Court's Memorandum Opinion and Judgment in *Bailey v. DeBard*, *supra*. In that charge, I urged LEAA to "suspend all LEAA funding

to the Indiana State Police Department and [to] initiate adminsitrative proceedings to recover all LEAA monies already unlawfully spent by the Indiana State Police Department." [A copy of that charge is attached hereto as Exhibit B].

17. Although I understand that LEAA has docketed my charge, I have received no response to my charge. LEAA has taken no steps toward suspension of LEAA funding to the Indiana State Police Department or toward recovery of LEAA monies unlawfully spent by the Indiana State Police Department.

18. I believe that the Indiana State Police Department, in the past five years, has received in excess of $3,000,000 in LEAA funding. LEAA has never terminated LEAA funding to the Indiana State Police Department for civil rights non-compliance.

/s/ _____
BRUCE BAILEY

Sworn to before me this 27th day of September, 1975.

/s/ _____
Notary Public

BAILEY AFFIDAVIT
EXHIBITS

AMERICAN CIVIL LIBERTIES UNION
22 East 40th Street
New York, New York 10016
(212) 725-1222

September 12, 1975

Clerk of the Court
United States District Court
for the Southern District of Indiana
United States Court House
Indianapolis, Indiana 46201

Dear Gentlepeople:

Please send me a *certified copy* of Judge Holder's July 31, 1975, lengthy Memorandum Opinion and Judgment in *Bailey* v. *DeBard*, No. IP 74–458–C (S.D. Ind., opinion signed July 31, 1975).

Please bill me at the above address for the cost of the certified copy.

Thank you for your assistance.

Sincerely,

/s/ _____
E. RICHARD LARSON
National Staff Counsel

ERL:mm

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

No. IP 74-458-C

BRUCE BAILEY, individually and on behalf of all others similarly situated,

INDIANA STATE CONFERENCE OF BRANCHES OF NAACP, on behalf of its members and on behalf of all others similarly situated.

vs.

ROBERT L. DEBARD, individually and in his official capacities as Superintendent of the Indiana State Police Department and Chairman of the Law Enforcement Training Board,

RICHARD JONES, individually and in his official capacity as Personnel Director of the Indiana State Police Department,

NORMAN R. REEVES, individually and DAVID J. ALLEN, individually and E. WILLIAM SCHILLING, individually and GARTH WHIPPLE, individually and JOHN KENDALL, individually and JOHN ZENTZ, individually and in their official capacities as members of the Indiana State Police Board,

THE INDIANA STATE POLICE DEPARTMENT,

THE INDIANA STATE POLICE BOARD,

IVAN H. BRINEGAR, individually and
ROBERT R. BROWN, individually and
EMERY M. BUNNELL, individually and
HAROLD LASAGE, individually and
WILLIAM F. LAWLER, JR., individually and
LEE E. MILLER, individually and
GROVER C. OSBORN, individually and
JAMES R. PEVA, individually and
GEORGE F. RAPP, M.D., individually and
GEORGE W. WISE, individually and

in their official capacities as members of the Indiana Law Enforcement Training Board, and

THE INDIANA LAW ENFORCEMENT TRAINING BOARD,

KENNY RAY ADAMS, and
JAMES R. ANDERSON, and
MICHAEL L. BECHER, and
LLOYD J. BOSTON, and
GLENN D. BOVARD, and
JOHN MICHAEL BRYANT, and
STEPHEN WAYNE CHAMBERS, and
JERRY W. CLIVER, and
DAVID LEE COLLINS, and
DAVID B. GRAVES, and
FREDERICK W. EVANS, and
STEVEN R. DUVALL, and
JOHN D. DUNN, and
JOHN L. DREYER, and
DONALD E. DOMBROSKI, and
PAUL D. DALTON, and
TERRY JAMES CORSO, and
ROBERT A. CORKWELL, and
KEVIN D. HAMILTON, and
TOM HART, and
LAWRENCE S. HORINE, and
JACK G. HORNER, and
THOMAS D. JARVIS, and
RICHARD L. KAGY, and
JIM W. KAYLOR, and
ROBERT J. LATHER II, and
GARY D. LEATHERMAN, and
ROBERT W. KREMER, and
MICHAEL R. KREINHOP, and
EDWIN L. KRAUSE, and
MICHAEL C. KOLLS, and
LARRY R. KEISER, and
DENNIS G. LEBIANC, and
JACK L. MARTIN, and
ROBERT T. MILLER, and
DANIEL S. MOORE, and

JOHN L. MOORE, and
WILLIAM E. MURRAY, JR., and
MICHAEL E. NALLEY, and
JAMES L. NELSON, and
KENNETH F. ROLAND, and
THOMAS HENRY REHLING, and
CRIS R. READ, and
RANDOLPH L. PRYOR, and
LARRY W. PIERCE, and
JAMES D. PHENICIE, and
WILLIAM C. PARTRIDGE II, and
REX A. ORCUTT, and
MICHAEL A. OSBORNE, and
ROBERT R. SCHULER, and
LANCE JOHN SEEVER, and
KENT MICHAEL SMITH, and
DONALD EUGENE SMOOT, and
JOHN N. STARKEY, and
JEFFREY S. STINSON, and
ROCKY L. STOTTS, and
MICHAEL R. TIMBERLAKE, and
KEVIN A. WILSON, and
MICHAEL J. WATERMAN, and
JAMES H. WALTERS, and
ALAN P. WALLING, and
DANIEL D. VERMILLION, and
RANDOLPH L. TRIER, and
RANDALL YABLONOWSKI, and
MICHAEL V. YOUNG,
as Indiana State Police Cadets and all as intervening defendants.

MEMORANDUM OPINION AND JUDGMENT

Prior to the commencement by the plaintiffs of their legal action on August 26, 1974, the incumbent Governor of Indiana committed the State to a policy of providing equal employment opportunity to all citizens of Indiana who seek employment with the State. The Governor sought to have State government endeavor to set the example for other employers, both public and private, in providing equal employment opportunity rights for minorities, women, the handicapped and older workers. This commitment, the Governor cautioned, did not mean that departments and agencies could be content with ending prior patterns of discrimination but that affirmative action programs must be developed that will seek out and involve minorities and women at every level of employment and decision making in State government. The Governor mandated that all citizens of Indiana must be allowed to compete on an equal basis for employment and advancement opportunities in the State service. On July 1, 1974 the defendant, Superintendent, certified that the Indiana State Police Department was formulating an Equal Opportunity Program in accordance with Volume 28 Code Federal Regulations Sections 42.301, et seq., Subpart E, and that the written program was on file in the office of the Indiana State Police Department, 301 State Office Building, Indianapolis, Indiana, for review and audit by officials of the cognizant State Planning Agency or the Federal Law Enforcement Assistance Administration, as required by relevant laws and regulations. The Project Plan For The Establishment And Implementation Of A More Effective Police Officer Selection Procedure For The Indiana State Police dated August 19, 1974 was prepared by Law Enforcement Manpower Research Project Industrial Relations Center, The University of Chicago. The project objectives spring from the statement in the plan that State police agencies are faced with the challenge of responding to rapidly changing conditions in the administrative and legal milieu in which they operate; in particular, in the personnel staffing process, recent court decisions,

including Griggs v. Duke Power Company, 91 S.Ct. 849, decided March 8, 1971 and administrative directives, make it clear that the "job-relatedness" of applicant screening procedures must be assured and documented; written tests used to screen applicants must be "validated" with respect to the entry job requirements of the agency if they are to be used at all; specific objectives of the proposed project are to develop a technically sound and effective personnel selection testing procedure which will be equitable to all applicants while maintaining if not enhancing current standards of on-the-job performance; to implement these procedures within the Indiana State Police, assisting in the initial application and developing the capacity within the agency to continue the use of the improved selection procedures; and to reinforce and develop the within-organization capacity to support a more effective staffing process and continued improvement of the Indiana State Police. The Project Manager named in such plan is John Furcon, Research Psychologist and Director, Law Enforcement Manpower Research, Project Industrial Relations Center, The University of Chicago. The published Indiana State Police Departments 1975 Plan included under the subject of Law Enforcement Training the statement of a need for improvement on selection procedures in that the Indiana State Police had become aware of a need to reevaluate its selection criteria, design instruments to fit its own particular needs, and implement new selection and promotional procedures; as is the case with most other police agencies, the Indiana State Police do not have the "in-house" capability of producing the base information, tests, and validation procedures required; that the establishing sets of selection criteria and the designing of testing implements for an agency which is as diversified and specialized as the Indiana State Police, the plan recited, will be difficult and time consuming; a program of several years duration will be required to produce the needed end result; and the plan recited that the Indiana State Police recognized that the long-run success of the Department is most critically dependent upon its human resources and being able to accurately identify those individuals, who are "best" suited to the multi-

faceted jobs of the Department can do nothing but result in the highest quality law enforcement service for the citizens of Indiana. The defendants' counsel argue that the action was ill timed in view of the good faith plans of the defendants and amounted to "getting into the act" of defendants' program. The plaintiffs' counsel's position is that there have been two training school classes in the year 1974 and another is planned for the mid-year of 1975 without completion of the implementation of the plans, and in fact the program was still unfinanced.

The issues were joined by the August 26, 1974 complaint as amended on August 29, 1974, as amended on September 16, 1974, as amended on December 10, 1974, as amended on December 11, 1974, and as amended on December 19, 1974, and as supplemented on November 13, 1974 and the answer of the defendants consisting of seven (7) defenses and filed on September 27, 1974. The action was advanced on the Court's calendar after the September 16, 1974 hearing and argument in the New Albany Division of this Court on the plaintiffs' motion for a temporary restraining order when such motion and the defendants; September 13, 1974 motion to dismiss as refiled on September 16, 1974 to the September 16, 1974 amended complaint were denied. The action on September 16, 1974 was set for trial on the merits November 21, 1974, the defendants were ordered to file their answer to the amended complaint within one (1) week, the parties were ordered to conclude all discovery by the end of October, 1974, and the parties were ordered to file weekly progress reports with the Court. Multiple pre-trial conferences were conducted. The parties stipulated to vacating the trial date of November 21, 1974 which was approved and the trail was rescheduled for December 9, 1974. Discovery time was also extended at the request of the parties to December 2, 1974. On November 27, 1974, the parties stipulated to sever and the Court approved the severance of the issues of the trial scheduled for December 9, 1974 to whether the defendants have in the past maintained or currently maintained hiring practices which are in violation of the statutes set forth in the complaint.

The plaintiffs filed a motion on October 11, 1974 to require the defendants to notify the Indiana State Police Cadets of the pending litigation in that such will affect them in that they are scheduled to complete their training and be appointed as probationary troopers on December 15, 1974 among other things, which motion was granted. On November 1, 1974, Kenny Ray Adams and sixty-four (64) other Indiana State Police Cadets filed their joint motion to intervene which motion was granted under Rule 24(a) of the Federal Rules of Civil Procedure.

The plaintiff, Bruce Bailey, is a negro citizen of the City of Gary, Lake County, State of Indiana, and the United States of America. Mr. Bailey was an applicant for the position of State Trooper with the defendant, Indiana State Police Department, in the years 1972 and 1973. Mr. Bailey failed to pass the defendant's written examination (Otis Gamma Form C test). The plaintiff, Indiana State Conference of Branches of the National Association for the Advancement of Colored People (NAACP) is an unincorporated association. The aims and purposes of the National Association for the Advancement of Colored People are to secure and maintain the elimination of all racial barriers which deprive citizens who are colored people of the equal privileges and burdens of equal citizenship rights in the United States of America. One of the primary goals and purposes of the National Association for the Advancement of Colored People is the elimination of racial discrimination in employment, thus making it possible for colored people to have an equal opportunity for employment. The National Association for the Advancement of Colored People alleges that certain racially discriminatory employment practices of the defendants have resulted in serious harm and injury to the individual members of the National Association for the Advancement of Colored People in Indiana because they have been denied employment, discouraged from applying for employment because of the alleged known discriminatory practices, and denied equal opportunity for advancement. The National Assocation for the Advancement of Colored People brings this action in the interests of these members and all others similarly situated that the National

Association for the Advancement of Colored People represent. The other parties plaintiff in the class action have already been identified in this entry and defined as those colored people who are negro and other minority persons, it is alleged, who have been denied, who may seek, and who (but for the alleged discriminatory practices and reputation of the defendants) would have sought employment or promotion as employees of the Indiana State Police Department.

The defendant, Robert L. DeBard, is a caucasian citizen of the State of Indiana and the United States of America and was on October 1, 1973 duly appointed the Superintendent of the defendant, Indiana State Police Department. Mr. DeBard has continued in such capacity since his appointment to the time of trial. The defendant, DeBard, (in all capacities) since the filing of the action on August 26, 1974, has voluntarily maintained a status quo awaiting the results of this case so advanced on the calendar and awaiting the results of pending studies of changes in the areas complained of in this action.

The defendant, Richard Jones, is a caucasian citizen of the State of Indiana and the United States of America and was in the year 1968 duly appointed the Personnel Director of the defendant, Indiana State Police Department. Mr. Jones has continued in such capacity since his appointment to the time of trial. The defendant, Jones, (in all capacities) since the filing of the action on August 26, 1974, has voluntarily maintained a status quo awaiting the results of this case so advanced on the calendar and awaiting the results of pending studies of changes in the areas complained of in this action.

The defendant, Indiana Police Department, is the State agency referred to in the Indiana statutes in this entry and on August 26, 1974, when this action was commenced, the duly appointed members of such Board were Normal R. Reeves, David J. Allen, E. William Schilling, Garth Whipple, John Kendall, and John Zentz all of whom are caucasian citizens of the State of Indiana and of the United States of America. The defendant, Board, the defendant,

Board members, and as individuals since the filing of the action on August 26, 1974 have voluntarily maintained a status quo awaiting the results of this case so advanced on the calendar and awaiting the results of pending studies of changes in the areas complained of in this action. This Board consists of six (6) members, not more than three (3) of whom must belong to the same political party to be selected and appointed for a given term by the Governor of the State of Indiana, each from six (6) different statutorily defined geographical regions of the State of Indiana. The administration, management and control of the Indiana State Police Department, along with other powers and duties, is vested in this Board. This Board is empowered to fix the salaries and compensation of the several police employees, with the approval of the Governor of the State of Indiana.

The defendant, the Indiana Law Enforcement Training Board, is the State agency referred to in the Indiana statutes in this entry and on August 26, 1974, when this action was commenced, the duly appointed members of such Board were Robert L. DeBard (ex officio), Ivan H. Brinegar, Robert R. Brown, Emergy M. Bunnell, Harold Lasage, William F. Lawler, Jr., Lee E. Miller, Grover C. Osborn, James R. Peva, George F. Rapp, and George W. Wise all of whom are caucasian citizens of the State of Indiana and of the United States of America. The defendant, Training Board, the defendant, Training Board members and as individuals, since the filing of the action on August 26, 1974 have voluntarily maintained a status quo awaiting the results of this case so advanced on the calendar and awaiting the results of pending studies of changes in the areas complained of in this action. This Training Board must consist of fourteen (14) members all appointed by the Governor of the State of Indiana, two (2) county sheriffs (one from a county of over fifty thousand (50,000) population and the other under such population), two (2) chiefs of police (one from a first or second class city and the other from a third or fourth class city), one (1) prosecuting attorney, one (1) judge of a circuit, criminal or superior court exercising criminal jurisdiction, one (1) representing

professional journalism, one (1) representing the medical profession, one (1) representing education, one (1) representing business and industry, one (1) representing labor, one (1) representing the Indiana Municipal League, and the Superintendent of the Indiana State Police Department serves ex officio as chairman of this Board. It established a non-voting advisory council consisting of the Special Agent in Charge of the Federal Bureau of Investigation field office covering the State of Indiana, the Attorney General of the State of Indiana, the Administrative Director of the Indiana Commission on forensic sciences, one (1) member representing theology, to be appointed by the Governor, and the Superintendent of the Law Enforcement Division of the Department of Natural Resources of the State of Indiana. It was the duty of this Training Board to adopt all necessary Rules and Regulations to carry out the provisions of the 1967 Act. Such Rules and Regulations were required to be adopted after necessary and proper investigation and inquiry by the Training Board and were made effective July 6, 1972.

The case was called for trial on December 9, 1974.

An oral motion, preliminary to trial's commencement intervened, was made by the plaintiffs to require a December 1, 1974 deposition witness, Geneva Anne Coffman, to answer certain questions which was denied.

An evidentiary hearing and argument on the December 5, 1974 third party petition of Lary D. Stoller, an Indiana State Police Officer on behalf of himself and all other incumbent officers to stay the examination of pre-employment investigation reports of Indiana State Police personnel also intervened preliminary to the trial's commencement. Mr. Stroller's petition was granted in part and denied in part, a formal entry of which ruling is separately entered of record under date of March 5, 1975.

Also preliminary to the trial's commencement there was an evidentiary hearing and argument conducted on December 10, 1974 on the request of the plaintiffs' motion to establish a class action. The Court finds that the plaintiffs bring this action on their own behalfs and, pursuant to Rule

23(a) and (b)(2) of the Federal Rules of Civil Procedure, on behalf of all others similarly situated. The class is composed of all black and other minority persons who have been denied, who may seek and who it is alleged (but for the alleged discriminatory practices and reputation of the defendants) would have sought employment or promotion as employees of the Indiana State Police Department. The Court finds that the class is so numerous as to render joinder of all members impracticable. There are questions of law and fact common to all members of the class. The Court finds that the plaintiffs have competent counsel who are financed and will fairly and adequately represent the interests of the class, and their claims are typical of the claims of the other members of the class. The Court further finds that plaintiffs alleged that the defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole should the class prevail in this action.

Also preliminary to the trial's commencement was the December 10, 1974 oral motion of plaintiffs to file the third amended complaint which was granted and such amendment was formally filed December 11, 1974. The defendants oral motion to strike the third amended complaint was denied after argument. The plaintiffs further orally amended their complaint by striking the claim for back pay for members of the class other than the named plaintiffs with permission for plaintiffs to later move for further amendment.

Also preliminary to the trial's commencement was the evidentiary hearing on the plaintiffs' December 5, 1974 motion for preliminary injunction which hearing December 11, 1974 was concluded with arguments on December 12, 1974 and the matter was taken under advisement. On December 13, 1974 the motion for preliminary injunction was denied insofar as it was directed at the defendants' appointment of the sixty-five (65) intervenor defendants as Indiana State Police Cadets and their right to accept such appointment to the Indiana State Police. This December 13, 1974 bench ruling is the subject of a separate entry dated March

1975. The matter of the Court's final ruling was continued under advisement pending the trial on the merits.

The trial commenced on December 11, 1974 and continued from day to day thereafter until December 19, 1974 when the plaintiffs rested. The defendants, at the conclusion of all of the plaintiffs' evidence, orally moved to dismiss under Rule 41(b) of the Federal Rules of Civil Procedure on the ground that the facts and the law the plaintiffs have shown no right to relief requested in the eight (8) counts of the complaint. The motion was granted in part and denied in part on December 19, 1974. The findings of fact and conclusions of law as to this Rule 41(b) motion are included in this entry on all issues. It is to be noted that at this point in the trial that the plaintiffs further amended their complaint by withdrawing any claims against defendants concerning their use by defendants of age, height, high school diploma or equivalent and possession of a valid motor vehicle operator's license as qualifying criteria for each applicant for the position of State Trooper and further withdrew any claims against defendants in the employment of the "limited police" class of defendants' employees and of the "civilian employees" class of defendants' employees, except for plaintiffs' claim that the enforcement by defendants of the Indiana statute which prohibits the appointment of adherents of any one political party to a rank, grade or position in all department positions which contains employees more than half of whom are adherents of that same political party.

The State of Indiana was the twelfth (12th) State to organize a State Police Department. In the year 1921, a State Department of Motor Vehicle Police was created under the office of the Secretary of the State of Indiana. Sixteen (16) deputies were empowered to enforce motor vehicle certification of title regulations and the vehicle taking laws of the State. Four (4) years later, in 1925, these deputies were given power to enforce some of the traffic laws. An accident reporting and recording system was begun in the year 1927.

The Indiana State Police of today was created as a result of the public demands of the early 1930's. There were many reasons for expanding the existing State Police System, included among such reasons was the irritating public experiences from an era of political excesses, the substantial increase in communications and use of the public highways due to the increased use of the motor vehicle, and the increase of crime by marauding and nomadic criminals. James M. Ogden, the Attorney General of the State of Indiana as Indiana's Chief Law Officer from 1928–1932, was one of the many citizens and officials who urged the creation of a State Police Force. Because of his official position his recommendations and plea for assistance from others to establish a State Police Force was recorded in a 1930 address to the Indiana State Bar Association.[1] Indiana at this time

---

[1] "***. The members of the bench and bar can remedy the hardship brought about in the administration of justice through politics. In this matter I desire to quote from an Article by Professor Raymond Moley of the Department of Law, Columbia University. He said: 'The startling crime rate in the United States is probably due to defects in the administration of justice. And wherein the administration of justice fails to work smoothly, it fails because it is compelled to operate under the handicap of politics. From arrest to conviction, from sentence to release, political influences are present, and wherever they are present they are pernicious.'

We have heretofore noted that one of the most active causes of crime today is that we do not capture the criminal after the crime has been committed. We have seen that out of the 14,000 major crimes committed over a certain period at a certain place the criminal profession would seem to be comfortably secure. This causes the crime to increase and flourish for the criminal rests in the satisfaction that his chances of capture and conviction are very remote.

One of the most effective means of coping with this condition is an efficient state police. Such police organizations as the Pennsylvania State police, the New York State troopers and the Texas rangers are effective. They are so organized that it is an honor to be a member; they attract young men, who receive intensive training and instruction. Under such a system the police profession is an honorable one. But to make it such the salaries of the police must be raised and pensions and insurance must be provided for them and their families. The applicants for admission to such a force should be compelled to meet

was seriously in need of more general police protection outside the larger Municipalities where only an elected county sheriff served the nonurban areas of the ninety-two (92) counties of Indiana. Also there was a growing serious need for policing motor vehicular traffic in all counties of the State. The 1930 United States Census discloses that Indiana's population was three million two hundred thirty-eight thousand five hundred three (3,238,503) of which ninety-six and five tenths (96.5) per cent were caucasian, three and five tenths (3.5) per cent were negro, and no registered percentage of other minorities. The Census also discloses the dispersion of the citizens and location of the minorities which when considered with the knowledge of which are the States large cities it is evident that the negro population was then concentrated in the cities.

The Indiana General Assembly reacted to the public urgings and created an Indiana State Police force in 1933. A review of the 1933 Act of the Indiana General Assembly as it has been amended, supplemented and as reenacted in its sessions to this date shows an unswerving continuous fulfilling of the objective of the citizens of Indiana to provide an adequate, up-to-date, highly trained Indiana State Police force for the citizens of Indiana. These legislative acts created a State Police Department, a State Police Board, the office of superintendent, provided for the organization and maintenance of a training school for police employees of the department and specifically providing that no police employee shall be assigned to regular active duty until he shall have received training and successfully passed

---

severe tests physically, mentally and morally, before being admitted to modern and thorough schools of instruction.

Scotland Yard of England, and Surette in France, and the Canadian Mounted Police in the last named country are governmentally maintained organizations of exports that know how to gather evidence, catch the criminal and procure his conviction.

The latest report available pertains to the Pennsylvania State police. *** Major Lynn G. Adams, superintendent of that force issued the following statement: 'The adequate policing of any community is one of the best deterrents to criminal deeds.' ***." Volume 6 Indiana Law Journal page 10.

the course for probationers prescribed by the superintendent; training courses, other than the probationers, were also required to be prescribed and conducted by the superintendent for all police employees of the State Police Department; the act provided that the superintendent and Board be filled by the Governor of the State of Indiana in accord with the laws' stated qualifications; the act provided that the superintendent, with the approval of the Board, shall have authority to formulate and adopt and put into effect such rules and regulations for the government of the department; the act provides that the superintendent, with the approval of the Board, establish a classification of ranks and grades and positions in the department, and for each rank, grade and position he shall designate the authority and responsibility within the limits of the act and the superintendent sets the standards of qualifications, in conformity with the most approved plans and standards adopted in other states, dominions and provinces, and he fixes the prerequisites of training, education and experience, and the superintendent, with the approval of the Board, from time to time, in accordance with the rules and regulations promulgated by him, designates the rank, grade and position, to be held by each employee of the department, until such person be designated by him to hold another rank, grade or position, and he has authority to assign and reassign each employee of the department to serve at such stations, and within the limits of this act to perform such duties as he designates; the act provided that the superintendent, with the approval of the Board and subject to appropriations and the requirement for training, appoint such personnel to the ranks, grades, and positions of the department and such appointments be made in such manner as to create and maintain in such ranks, grades, and positions so that not more than one half (½) of the personnel are adherents of any one (1) political party; the Act provides that the superintendent devise and administer examinations designed to test applicants in the qualifications required for the rank, grade or position, and only those applicants be appointed who best meet the prescribed standards and prerequisites; the Act provides that all employees appointed to the department be

probationers and on probation for a period of one (1) year from the date of appointment which statute may be extended for any period not to exceed one (1) year; the Act makes it a misdemeanor for any employee to participate in any manner in political campaigns for public office; the Act provides that the superintendent may discharge, demote or temporarily suspend any employee for cause in a prescribed method and procedure and with other due process safeguards to the employee, except that no employee can be demoted, discharged, temporarily suspended or disciplined because of political affiliations, nor can such action be carried out after his probationary period, except that probationers are accorded a right of hearing; such Act, among other things, provided for the creation of a bureau in the department known as the Bureau of Criminal Identification And Investigation and required it and all local law enforcement officers and penal institutions to cooperate and assist each other; and the Act further provided for the superintendent to supervise the conducting of courses of training programs in semiannually conducted conferences at the several State police posts for law enforcement officers, trainees and applicants, of the rural political subdivisions of the State, the courses to include instruction in detection, pursuit, apprehension, and conviction of criminals, as well as safety instructions and first aid assistance, together with such other subjects deemed appropriate by the superintendent. In 1971 there was an Enforcement Section established in the State Police Department and it was charged with the enforcement of the Motor Carrier Act of 1935 as amended on behalf of the Public Service Commission of Indiana. In 1971 there was created a Criminal Justice Data Division in the Indiana State Police Department. Previously in 1937 a legislative Act enabled the Department of State Police to establish and operate a pension program for eligible employees.

In 1967 there was created a Law Enforcement Officers Training Academy. It provided for an Executive Director and a Board of which the Superintendent of the Indiana State Police Department is ex officio chairman. This Act is construed as supplementary to the Indiana State Police Act

as amended. In order to insure the public safety and general welfare of the people of the State of Indiana and to promote equity for all segments of society a program of mandatory training for law enforcement officers was established by this Act. It provided that the Act be interpreted so as to achieve such purposes through the establishment of minimum standards in law enforcement training. The intent of the Act is to encourage all law enforcement officers, departments and agencies within this State to adopt standards which are higher than the minimum standards implemented in the execution of this Act and such minimum standards are in no way to be deemed sufficient or adequate in those cases where higher standards have been adopted or proposed.

Such laws extended police duties and powers to the officers and police employees of the Indiana State Police Department by vesting them with all necessary police powers to enforce the provisions of the laws of the State of Indiana for the regulation and use of automobiles, motor vehicles and other vehicles, and the laws for the safeguarding and protection of the surface or other physical portions of the highways of the State of Indiana, and without writ or warrant for violation thereof when committed in their presence. Such laws also extended the duty of police employees of the department to prevent and detect crime, to apprehend criminals, to enforce the criminal and traffic laws of the State, and to perform such other related duties as may be imposed upon them by the laws of the State, and to this end, police employees of the department became peace officers and have in any part of the State the same powers with respect to criminal matters and the enforcement of the laws relating thereto as sheriffs, constables and police officers have in their respective jurisdictions, and have power and authority to act as agents for the State of Indiana on return of parolees, fugitives from justice and persons extradited to Indiana for crime; and any warrant of arrest or search warrant issued by proper authority of the State may be executed by any police employee of the department in any part of the State, according to the tenor thereof, with-

out endorsement. They are subject to the call of the governor, and the governor may, from time to time, assign to the department such other police duties as the executive department may deem advisable or necessary, including the duties now performed by deputy fire marshals; they have full power to arrest, without warrant, any person committing or attempting to commit in their presence or view a breach of the peace or any other violation of any of the laws of the State of Indiana; and, under order of the superintendent, they are empowered to cooperate with any other department of the State of Indiana or with local authorities. They cannot exercise their powers within the limits of any city in labor disputes, nor to suppress rioting and disorder except by direction of the governor, or upon the request of the Mayor of any such city with the approval of the governor; and without the limits of any city of the State they cannot exercise their power and authority in labor disputes except by direction of the governor, or the request of the judge of the Circuit Court of the County with the approval of the governor.

Only those applicants who meet initial standards have been and are considered for the position of trooper. These initial standards in effect since December 13, 1963 as amended April 13, 1971 by rule and regulation of the Indiana State Police Board require that the applicant must be a citizen of the United States of America; must be twentyone (21) years of age but not yet thirtyfour (34) years of age as of the opening date of the preduty training school applied for, and must be less than thirty-five (35) years of age when appointed as a police employee, except that the superintendent with the approval of the State Police Board has the authority to recruit police employee applicants between the ages of nineteen (19) and twentyone (21) years who otherwise meet all qualifications for the position of police employees, in order that the State Police Department may hire such applicants in nonpolice vacancies until they reach age twenty-one (21), at which time they would be eligible for, but not guaranteed, an appointment to fill a police vacancy, pursuant to the approval of the superintendent and Board as provided by law; must be

at least sixty-nine (69) inches, and not more than seventy-seven (77) inches, in height, without shoes; must have a weight in proportion to the applicants height in accordance with accepted height in accordance with accepted medical standards; must be a high school graduate as evidenced by a diploma issued by an accredited high school or an equivalency diploma issued by an accredited high school is acceptible; must possess a valid driving license; must be willing, if appointed, to reside and serve any place within the State of Indiana, as designated by the superintendent; and must be willing, if accepted, to refrain from participation in any manner in political activity, except by voting.

The applicants meeting such initial standards have been and are eligible to compete in the remaining steps in the selection procedure. Such procedure included the selection only of the higher graded portion of the applicants as evidenced by intelligence and other tests according to predetermined standards fixed by the superintendent, with the approval of the Indiana State Police Board; the selection only of those applicants whose character, reputation and temperament are judged fit for police duty, as determined by an investigation conducted by Indiana State Police Department personnel; the selection only of those applicants who are found to conform to the physical standards prescribed by the superintendent and the Indiana State Police Board as evidenced by a physical examination conducted by a competent medical doctor retained by the Indiana State Police Department; the selection only of those applicants whose poise, appearance and attitude would make them suitable to contact the public as police officers, as determined by individual interviews by an interview board appointed by the superintendent and comprised of Indiana State Police Officers in the grades of Lieutenant and above; the selection only of those applicants who have been assigned by the superintendent to a preduty training school and who attend such school and subject to the right of the commander of the training division, with the approval of the superintendent, to dismiss applicants assigned to such school at any time; and the selection only of those applicants who have competed in a personal interview with the

superintendent and the Indiana State Police Board, following which the applicants may be appointed to the Indiana State Police Department, placed on a reserve list for the filling of future vacancies or dropped from further consideration as prospective police employees.

The defendants and its agents and employees conduct is subject to the requirement that no applicant or employee shall be discriminated against, or favored, with respect to the applicant's or employee's hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment because of the applicant's race, color, religion, national origin or ancestry. Each applicant and employee will be limited only by the applicant's or employee's own abilities and qualifications, and the department will endeavor to select, hire, and maintain in its employ only the best qualified persons available for any particular position.

In keeping with such statutes all police personnel have been and will be appointed to the Indiana State Police Department by the superintendent with the approval of the Indiana State Police Board, and then only after satisfactory completion of the selection and training procedures prescribed by the superintendent and Indiana State Police Board and such applicant not having arrived at the age of thirtyfive (35) on the date of appointment. Such police appointments have been made for a probationary period of at least one (1), but not more than two (2), years during which the probationer may be discharged by the superintendent without the right of hearing before the Indiana State Police Board. All permanent police appointments have been and will be appointed by the superintendent and the Indiana State Police Board upon satisfactory completion of the probationary period. All police appointees before employment have been and will be required to sign a statement upon their oath or affirmation attesting that they are not now and have never been a member of, or otherwise affiliated with, any organization, association, or body which advocates the overthrow of the United States government or its several subdivisions by force or violence or illegal means. It is a condition of employment of police personnel that they

may be transferred from one bureau, division or area to another only by the superintendent according to the needs of the Indiana State Police Department, as outlined in the orders of such department.

In keeping with such statutes the promotion of police employees to a grade, position or classification below the grade of captain or equivalent have been and will be accomplished by the personnel officer publishing within the Indiana State Police Department to each bureau, division, area and district commander of an existing vacancy includes the minimum qualifications for said vacancy, as determined by the Personnel Board, and a deadline date for expressions of interest in such vacancy. Each commander after notice of such vacancy is required to notify through channels all members of his command who meet the minimum requirements for such vacancy. All persons meeting the minimum qualifications for the vacancy and who successfully pass any prescribed screening examination, have been and will be interviewed by the Personnel Board or by a committee selected by the Personnel Board. After such interview the Personnel Board considers all other information concerning the persons interviewed which is available to it, and with due consideration for the requirements of the position to be filled, it will make its recommendation to the superintendent. After considering the recommendations of the Personnel Board, the superintendent will designate the person to be promoted, subject to the approval of the Indiana State Police Board. Unless an exception is made by the superintendent, with the approval of such Board or a spot assignment, or temporary appointment, is made by the superintendent, with the approval of such Board, no police employee is eligible for promotion into a line command position, until such time as such employee has completed five (5) years' service with the Indiana State Police Department as a police employee, and no promotion can be made into a specialist until the completion of three (3) years' service as a police employee. When vacancies in the various grades of the Indiana State Police Department occur, a basic requirement for eligibility for promotion is that the applicant shall have held a grade not less than two

(2) grades below that of the vacancy, for a period of not less than one (1) year. In keeping with such statutes the promotion of police employees to the grades of captain, or equivalent and above, have been and will be made by the superintendent subject to the approval of the Indiana State Police Board.

Effective July 6, 1972 the Law Enforcement Training Board adopted, in accordance with the 1967 Act creating it, certain rules and regulations. All law enforcement officers appointed by the State of Indiana were required to complete the minimum basic training course prescribed by the Law Enforcement Training Board. Such training course could be taken at a central training facility provided by the Law Enforcement Training Board or at any Training Board approved school or academy utilizing approved instructors, courses of study, attendance requirements, equipment and facilities. (Under certain standards training may be had at a school elsewhere than the Training Boards central training facility.) The Executive Director of the Training Board is required to establish, and appply uniformly to all persons attending Training Board approved basic training schools, a minimum passing score of seventy (70) per cent for the academic phase of the basic training course. The failure to attain such passing score for the basic training course constitutes grounds for discharge on the basis of incapacity or incompetency. A person failing to achieve such passing score need not be discharged if the officer, agency, or department employing such person obtains approval from the Executive Director for such person to re-take the basic course at the earliest opportunity. If such person fails to achieve a passing score for the second time, he will not thereafter be eligible for admission to a basic training school. The minimum standards of physical, educational, mental and moral fitness governing acceptance for training established by the Training Board required that the applicant for trooper shall have reached the age of twentyone (21), unless the employer employs enforcement officers at a lesser age; the male applicant must not be less than one hundred forty (140) pounds in weight, without clothes, and the weight must be in proportion to the height and build;

the applicant must possess an acuity of vision correctable to twenty-thirty (20–30) or better in each eye (any applicant possessing uncorrected visual deficiency to such an extent that, in the opinion of the examining physician, he would be unable to safely perform police duties in the event of temporary loss of corrective glasses or lenses, shall be unacceptable), and he must have the ability to distinguish the colors of red, green and amber and have no pathology of the eyes; the applicant must be free from any major impediment of the senses; the applicant must be a high school graduate as evidenced by a diploma issued by a high school accredited by the department or agency of a State authorized to accredit high schools, or an equivalency diploma issued by such an accredited high school; the applicant must possess a valid driving license from the State of residence; the applicant must be of good reputation and character which must be investigated by the Indiana State Police Department in the form and manner as prescribed by the Training Board and the results shall be retained in written form for inspection by the Training Board or its authorized representative; the applicant must not have been convicted of a felony or any crime involving moral turpitude; the applicant must be fingerprinted and a search made of local, State and national fingerprint files to disclose any criminal record and the fingerprint cards and any identification records shall be retained for inspection by the Training Board or its authorized representative; the applicant must be given a Training Board approved intelligence quotient test or examination and shall achieve a minimum intelligence quotient equivalent to ninety (90) on the Otis Gamma C test; the applicant must not be dishonorably discharged from military service and a discharge other than honorable may be grounds for rejection in accordance with the standards for requirement of the standards for good reputation and character and the standards for physical, emotional and mental fitness; and the applicant must be examined within one (1) year prior to acceptance for training by a physician (other than the applicants physician) who has an unlimited license to practice medicine who will aid in determining that the applicant is physically, emotionally and mentally fit

for normal police functions, and in addition to the standards for height and weight for male applicants and the standards for good vision and unimpaired senses of all applicants the applicant must satisfy the minimum medical fitness standards for retention of personnel in the Army of the United States of America, the results of which examination shall be retained in written form for inspection by the Training Board or its authorized representative and a copy of the report of the physical examination shall be presented to the Training Board prior to acceptance for training at any approved academy.

The minimum standards prescribed by the rules and regulations of the Law Enforcement Training Board, effective July 6, 1972, for courses of study for approved town, city, county and State law enforcement training schools for basic training courses consists of two hundred forty (240) classroom hours covering the subject matter of academy introduction and orientation, police-community relations, agencies and their jurisdiction within the criminal justice system, law enforcement ethics, criminal law and procedure, law enforcement and investigative techniques, civil process, psychology and sociology, traffic control and enforcement techniques, criminalistics and forensic sciences, first aid, defensive tactics, and proper use of firearms. The minimum classroom hours and subject matter may be increased by the Training Board. The Executive Director of the Training Board or his designate must first review and approve of lecture outlines and other course material used to satisfy the requirements and a copy must be filed and retained by the Training Board. The minimum qualifications for instructors at approved law enforcement training schools established by the Training Board, effective July 6, 1972 require that the Training Board through its Executive Director must certify instructors deemed qualified to teach in one or more of the prescribed training courses, that is, the instructor is certified on the basis of minimal qualifications in the areas of education, training and experience—instructors for professional police subjects, must have a minimum of five (5) years of law enforcement experience, a minimum of high school graduation or the equivalent, and

educational and experience requirements may be waived in unusual circumstances by the Training Board; instructors for general subjects, may be certified on the basis of their individual qualifications. The Law Enforcement Training Board by rule and regulation also provided for minimum standards of training and minimum standards for troopers for the use of an average speed computer as an enforcement tool. Effective July 1, 1970 all law enforcement officers who use an enforcement tool device installed in an automobile (excluding the tachometer, speedometer, radar, and electric speed timer using a hose or similar actuating device) which either mechanically or electronically computes average speed from the quantities of distance and elapsed time shall have successfully completed training in the theory and operation of such device of at least three (3) hours of class room, lecture-type instruction, including, but not necessarily limited to the subjects of scientific principles upon which device and method are based, the mechanical or electronic operation of the device (in layman's terms), methods of calibration, or checking the device for accuracy, techniques of using the device as an enforcement tool, and presentation of evidence and proper testimony in a trial involving the device and speed computing method; must complete three (3) hours of field demonstration and instruction by a trained certified proficient operator; must complete a period of eighty (80) hours on routine traffic patrol in a vehicle equipped with such device during which time he must practice the use of the device but shall take no enforcement action for violations based on the use of the device; and after such eighty (80) instruction hours of practice such trooper is then eligible for a field test in the use of the device, the standards for which are prescribed, and if successful may be certified for such duties.

The legislative authorized budgets disclose a modest State Police force in the beginning but it has grown substantially so that on August 26, 1974, when this action was commenced, the total work force (including police, limited police, and civilian employees) of the Indiana State Police Department was about one thousand three hundred forty (1,340) of which about nine hundred thirtyseven (937) were

uniformed troopers and higher ranking officers. There were nine hundred thirteen (913) police employees as of November 8, 1974, three (3) of whom were negro (the first negro trooper was employed in 1962) and the rest of the complement were on that date caucasian. Authorizations and appropriations have been made allowing the Indiana State Police Department to increase the complement of the police employees to nine hundred ninety-eight (998). The 1970 United States Census discloses that Indiana's five million one hundred ninety-three thousand six hundred sixty-nine (5,193,669) of which ninety-two and eight-tenths (92.8) per cent were caucasian, six and nine-tenths (6.9) per cent were negro, and one-tenth of one (0.1) per cent were other minorities. The Census breakdown by counties also discloses the dispersion of the citizens and geographic location of the minorities and caucasians which when considered with the knowledge of which of the cities are Indiana's large cities it is evident that the negro population is still concentrated in the cities as it was in the 1930 census. During the agencies existence there have been four (4) negro troopers, the first negro trooper was employed in the year 1962.

Prior to the year 1970 the defendants did not actively or officially recruit applicants of any race for the position of trooper except to announce, through the media, that the defendants were taking applications. The Public Information Office of the Indiana State Police Department has endorsed and supported the Kiwanis Clubs of Indiana's conducting of summer camps for underprivileged young people who would not normally be able to afford such camps. The planned agenda of such camps exposed to such young people, among other things, the Indiana State Police Department. The objective of such exposure has been to give them a picture of what the Indiana State Police Department is like and to encourage their future application for the position of trooper. The Indiana State Police Department considered the Public Information Office's efforts in such career camps as a recruiting process. However, the defendants were benefited through the years by a substantial group of applicants from those sections of the State with little or no negro population. These applications resulted from

the good "image" and public relations naturally and consequentially resulting from the public's approved performance of duty of all of its working police personnel in such sections of the State. In addition, as in all police forces, there were the applicants who were related to or were family friends of the employees of defendants. The defendants are primarily a rural police organization and relatively have only a small amount of contact with the citizens of the large cities. The quantity of negro applicants for the position of trooper in Indiana has been small. This compares with other States experience. The reasons for this are many. In the cities a negro who desires to be a police officer chooses the City police force of the city of his residence because of the image of such City police officers on the local force in his community and on the other hand the lack of knowledge of the actual duties of the State trooper and the lack of desire to leave his social surroundings for duty in some far off rural section of the State; the competition of industry for the labor force in the cities also has affected the quantity of applicants from the cities, including negros; the hazards and risks to the occupation of a police officer also is a deterent to the quantity of qualified applicants from the cities where such happenings to police officers receive intense publicity; in recent years there has been intense publicity of a degrading nature that affected all organized police forces, which era has been referred to as the "PIG" years as the advocates of causes publicly ridiculed law enforcement throughout the United States as "PIGS"; the negro population in Indiana has to some extent concluded that the department is maintaining a racially discriminatory hiring practice and the low number of negro troopers is very convincing to that group of people, this was greatly aggravated in recent times (when defendants have been trying to launch an affirmative program of minority recuriting) when the plaintiff association prior to the bringing of this action mistakenly charged a trooper of the Indiana State Police Department with racial misconduct in the filling out of an arrest ticket for a negro operator of a motor vehicle in a small community in Lake County, Indiana. The plaintiff association publicly demanded a hearing before the Indiana

State Police Board which demand was publicly reproduced in media of the major cities of Indiana. The representatives of the plaintiff association appeared before the Indiana State Police Board in a public hearing. It then disclosed that the arresting officer was not an employee of the Indiana State Police Department but was a law enforcing officer of a small community in Lake County, Indiana. The leaders of the plaintiff association sincerely apologized for the mistake but it is a recognized fact that in public life, and such is the status of the defendants, the explanations never erase the accusations. This incident and the commencement of the instant action together with the fact that there are only three (3) negro troopers in the complement of the Indiana State Police Department has established in the minds of substantial of the negros in Indiana that the present leadership of and the Indiana State Police Department is now maintaining a racially discriminatory hiring practice. The plaintiff produced a witness from New York City, a New York City police officer, who recounted the intense recruiting in New York City by the New York State Police Department for applicants from the minorities in that City for the position of New York State trooper. Despite these massive recruiting efforts by the use of negro recruiters, interested groups, publicity and a well-financed program with adequate staff the net result was the employment of one (1) State Trooper from New York City. The New York State Police Department's experience caused it to conclude that those negros in New York City who could qualify for employment as a trooper did not apply. It concluded that the qualified negro of that City did not apply because of his dislike for the working conditions of a New York State Police Department trooper and does not want to leave New York City as he would be required to do. The Indiana State Police Department between 1971 and 1974 made recruitment efforts with emphasis on minority citizens. In 1971, two negro troopers were assigned about one month prior to the close of applications to recruit negros to apply for the position of trooper. The crash effort consisted of some news releases and four (4) recruiting sessions, two (2) at Gary West High School and two (2) at Indianapolis

Shortridge High School. Over one hundred (100) applications were distributed to negros through these efforts. The number of negros applying increased in 1971 by fortyfive (45) to fifty (50). The negro recruiters were never informed by the defendants as to the success of their efforts, that is, how many negros actually applied to take the examination for trooper in 1971. There were no meetings or discussions of any kind with defendants as to the recruiting efforts. The defendants did not formulate any written policy with regard to minority recruitment. No budget was allotted for such recruitment. No apparent interest was generated in minority recruitment until on June 15, 1972, about two (2) weeks after the application period opened, the two negro troopers of who experienced the 1971 recruitment were again requested to recruit minority applicants. They agreed to do so after the superintendent, a predecessor of the defendant, superintendent, promised department support, including the promise that a tally would be kept of negros at all stages of the selection process. One (1) of the negro troopers was relieved of his police road assignments and was allowed to spend six (6) weeks on the recruiting assignment with two (2) other negro troopers were made available for special assignments. Seventyseven (77) negros, ten (10) spanish american, four (4) women, and seven (7) caucasians were given applications during the recruiting sessions held by the three (3) negro recruiting troopers. The recruiters were not informed as to the number of negro applicants, nor as to why each negro was rejected in the selection process as promised. The full time recruiter submitted a written summary of the minority recruiting effort with ten (10) recommendations to the department on September 7, 1972. Such superintendent acknowledged the memorandum but no meetings or discussions were ever held to evaluate the recruiting effort of 1972 until April of 1973 when a meeting to discuss and appraise minority hiring practices of the department was called by the Indiana State Police Board. There were approximately fortyfive (45) to fifty (50) negro applicants in 1972. The recruiting negro troopers were advised by the personnel officer that they had failed in their recruiting efforts in that their efforts had only a negligible

impact on the number of applicants. The recruiting troopers were unable to respond as they did not possess evaluation facts but pointed out that no negros had ever been involved in the selection process. After this meeting there were no further discussions of minority recruiting with such negro recruiting troopers. In the fall of 1972 such full time negro recruiter was asked to do character investigations of applicants for troopers and he refused because in his opinion the department had taken no meaningful steps with regard to minority recruitment. This trooper did not thereafter participate in recruiting efforts of defendants. Late in 1973 in preparation for the 1974 training class the department decided to institute a general recruitment program. Under this program, at least one (1) officer was assigned to the general recruitment for approximately two (2) months prior to the examination deadline. The recruiters one (1) of whom was a negro, were given no specific instructions on the recruiting minorities other than to recruit negros, "if they were available" and to keep the names and addresses of any minorities or women to whom they gave applications. A total of one thousand five hundred eightyfive (1,585) applications were distributed during the recruitment drive. Of that number of applications distributed, twentynine (29) were given to negro males, three (3) to negro females, twenty (20) to caucasian females, one (1) to a spanish individual, and the balance to caucasian males. The only minority recruitment effort made as to the 1973–74 train-class of January 1974 was through a small number of newspaper advertisements, which stated for the first time that the department was an "Equal Opportunity Employer." Two training classes were conducted in 1974, the first was in January 1974, the recruitment for which was referred to above, and the second class was in September of 1974 the applicants for which were obtained under the same method of recruiting. For these two (2) training classes for troopers positions the department received applications from a total of one thousand eight hundred (1,800) persons of which less than three (3) per cent were negro. The Minority recruitment programs of 1971–1974 were inadequate and could not compete with the "Image

Recruitment," as hereinbefore explained from which the department benefits but which attracts caucasians as applicants for trooper positions. A properly run minority recruitment program is a continuing rather than a sporadic process. There are a wide variety of grants available to police departments from federal agencies, particularly Law Enforcement Assistance Administration, and from private agencies, organizations, and foundations for the purpose of conducting minority recruitment programs. The Indiana State Police has never requested adequate appropriations for recruitment of minorities. The Indiana State Police Department has never applied for any of these grants, except that the Indiana State Police has recently made application for an L.E.A.A. grant which includes money for recruitment. This application was pending at the time of trial. This court would not attempt to draft a recruiting program for the department on this record as the citizens of Indiana have placed this responsibility upon defendants. The failure to recruit qualified minority citizens must be noticed and remedied by the defendants. The incumbent administration of the department, it appears from the evidence, is girding itself for some changes. This is evident from the fact that it has caused studies to be undertaken by recognized experts from Detroit, Michigan and Chicago, Illinois and federal financial assistance is imminent. The defendant, Richard Jones, individually, and in his official capacity as Personnel Director of the Indiana State Police Department at no time has been assigned the undertaking of recruiting caucasian or negro applicants for the position of trooper, nor has he participated in such recruiting or practiced any discrimination in such. The members of the Indiana Law Enforcement Training Board as individuals or as officials have no obligation under the law for recruiting and practiced no discrimination in such recruiting. The named members of the Indiana State Police Board, as individuals have not nor have they in their official capacity intentionally failed to recruit minority applicants for troopers. Such members of the Indiana State Police Board, while they were such board members when this action was commenced on August 26, 1974, there is no showing of the length of their service to

create liability for the recruiting by the Indiana State Police Board as to such defendants as individuals. This is to be distinguished from their liability as official members of the Indiana State Police Board for the Indiana State Police Board's breach of duty for recruitment in the past.

The applicant for the position of trooper must file an application. The form is furnished with instructions as to how it is to be executed. The completed application contains the facts which disclose whether or not the applicant meets the initial standards previously referred to in accordance with the statute, rules and regulations. The executed applications are examined by the defendant, Richard Jones, the Personnel Director of the Indiana State Police Department, who evaluates and decides whether the applicant should be rejected for failing to fully complete the form; and whether the applicant should be rejected based upon the responses the applicant gave regarding an arrest or conviction record of the applicant, or the military service record of the applicant, or the physical condition of the applicant. Information given in the application forms a basis for the subsequent background investigation which is conducted, should the applicant pass the Otis Gamma C text. An applicant may be rejected on the basis of information given on the application form, but that rejection will not occur until the background investigation phase of hiring or the subsequent interview with a committee or board created by the defendant called the Personnel Board. This Board is not a continuing body. The members of this committee or board are selected by the superintendent from members of the superintendent's staff who serve in this capacity for a specific training school class. The complement of the committee or board has varied from six (6) to nine (9). The defendant, Richard Jones, as the Personnel Director of the Indiana State Police Department, was appointed and served for the first time on as a voting member on such committee for the most recent training school. The defendant, Richard Jones, individually and in his official capacity as Personnel Director of the Indiana State Police Department merely executed his ministerial duties in reviewing such applications and rejections of applicants and practiced no discrimination. The incum-

bent superintendent designated a negro trooper along with other staff members to review the rejection processing of such negro applications by the Personnel Director upon request of persons outside the Indiana State Police Department who were disatisfied with the results of a class of recruits whose applications were the result of the recruiting drive by negro troopers which drive was previously referred to in this entry. The negro trooper who participated in such review saw no cause to refute the rejections by the Personnel Director. The members of the Indiana Law Enforcement Training Board, as individuals or as official board members have no obligation under the law for reviewing such rejection processing of applications and practiced no discrimination in such processing of applications for a trooper position. The named members of the Indiana State Police Board as individuals have not directly or indirectly wrongfully rejected such trooper applications at this stage of the selection processing of trooper applications.

After an applicant files his application and meets the initial standards, all in accord with the statutes, rules and regulations previously referred to in this entry, the applicant must then submit to tests and achieve a score of one hundred ten (110) or higher on the Otis Gamma C test. He was also given a SRA adaptability test (a U.S. Army general classification test being the First Civilian Form AH, published by Science Research Associates). This test was given as a "warm up" test, with SRA scores also serving as a double-check on the accuracy of the Otis Gamma C test score. These tests are administered by the Personnel Director. The passing score must be attained by the applicant in order for the applicant to proceed to further steps along the selection process. The scores on this test are also disclosed to the Personnel Board by the Personnel Director when he briefed them for the personal interview step in the applicant's competing to attend training school. The Indiana State Police Department have used the Otis Gamma C test for many years. It is a quick-scoring mental ability test authorized by Arthur S. Otis, Ph.D. who was formerly Development Specialist with the Advisory Board, General Staff, United States War Department. His Gamma

Test (form C) is utilized for senior High Schools and Colleges. The Otis Gamma Test (form C) is a "mental ability" or "intelligence quotient" type test consisting of eighty (80) questions relating to arithmetic, verbal and special perception skills. The applicants who score one hundred nine (109) or below are rejected from competing further for the position of trooper. The cutscore was first adopted by the Indiana State Police Department from the cutscore of one hundred ten (110) on a test used by the armed services for selecting candidates for Officers Candidate School. Although the Indiana State Police have adopted a cutscore of one hundred ten (110), the rules and regulations promulgated by the Law Enforcement Training Board previously referred to in this entry set a minimum standard cutscore of ninety (90). The Indiana statutes and the rules and regulations previously referred to encourage higher standards and leave it to each police agency to set its standard in this regard so long as it is not below such minimum. Although the scores of candidates taking the Otis Gamma Test (form C) are not separated by race for prior years, those scores are known for the recruits in the training school for early in the year 1974 and for the recruit training school late in the year 1974. In August 1973 such test was administered to six hundred seventy (670) caucasian applicants and twentyone (21) negro applicants. A total of three hundred eightyfour (384) caucasians, or fiftyseven (57) per cent passed the test, while only six (6), or twentynine (29) percent of the negro applicants passed such test. In April 1974 such test was administered to six hundred thirtyfive (635) caucasian applicants and twenty (20) negro applicants. Of that number three hundred fiftynine (359), or fiftyseven (57) per cent of the caucasians passed and none of the negros passed. The entire record of the defendants' use of such test discloses only twentyeight (28) negro applicants have passed such test and only four (4) of those were ultimately hired. The rebuttable evidentiary presumption from such statistics is that the test discriminates against negro applicants. The employer has the right to insist that any prospective applicant caucasian or negro must meet the applicable job qualifications of a trooper in keeping with U.S.

Equal Employment Opportunity Law's purpose, that is, to promote hiring on the basis of job qualifications, rather than on the basis of race or color. The Indiana State Police Department has received grants from the Law Enforcement Assistance Administration of the U.S. Department of Justice for various purposes, which grants exceed one hundred thousand dollars (100,000.00). Defendants are subject to L.E.A.A.'s Equal Opportunity in Employment Guidelines. These guidelines incorporate and substantially duplicate those of Equal Employment Opportunity Commission's guidelines respecting testing standards. The law commands that any test used by the defendants must measure the person for the job and not the person in the abstract. In order to rebut the presumption the defendants must prove by a preponderance of the evidence that the Otis Gamma Test (form C) is a reasonable measurement of the applicants for the duties of a trooper. Prior to trial the Indiana State Police Department had not performed a study, and was not otherwise aware, of whether any of the applicants who scored one hundred nine (109) or below on such test and were rejected would have been able to successfully complete the remaining phases of the selection process or adequately perform the position of trooper. There is no comparison of score results of such test of caucasian and negro applicants who reside in the major cities to factually determine whether or not the qualified major city residents are not making application for the position of trooper but only the lesser qualified persons are applying. The Indiana State Police Department has failed to conduct a proper validity study prior to trial within the meaning of the U.S.E.E.O.C. Guidelines or A.P.A. Standards. The Study which has been conducted by the Indiana State Police Department is simply a job analysis for the position of trooper, and it fails to meet the U.S.E.E.O.C. Guidelines in that, it does not analyze the relationship between such test and any measure of job performance of a trooper; the study does not contain any adequate analysis of differential validity (inquiring into whether the test may be a valid predictor of job success for caucasian but not for negros); the study failed to include such test's scores of actual job applicants

and he studied the job performance of only one (1) trooper for one-half (½) day to formulate his opinions of the position of trooper in general; the study did not show that the cutscore on such test is reasonable and consistent within the work force or group or force on which the study was conducted; the study was not a criterion related validity study, a content validity study, nor a constructive validity study which is the only type of validity study which may be offered in defense of the test, or to rebut the presumption of invalidity found above; and the study failed to show that there is not available a suitable alternative to such test which will select qualified applicants equally well but with a lesser racial impact, as required by U.S.E.E.O.C. Guidelines. The defendants during the trial made a study of the correlation between the scores on the Otis Gamma Test (form C) of those applicants who attended the cadet school and their final grades in a criminal law course. While this evidence is relevant and useful it is not conclusive under the standards of the U.S.E.E.O.C. Guidelines. When the defendants have completed the planned program it may well be that a cutscore of one hundred and ten (110) is an acceptable standard for the selection of troopers and indeed may save some applicants the time, loss of earnings from other gainful employment and possible embarrassment in being permitted to attend a training school when the test could predict failure. It must be pointed out in this connection that plaintiffs have already prevailed in these findings on their claim that negros are not applying for the position of trooper. Also there are unknown facts as pointed out in this entry. The assigned duties of a trooper are described in the statutes, rules and regulations referred to in these findings requires a person of general intelligence. He must have the ability to absorb, retain and apply the necessary instruction as a trooper. The defendant, Richard Jones, individually and in his official capacity as Personnel Director of the Indiana State Police Department merely executed his ministerial duties in administering the Otis Gamma Test (form C) and he practiced no discrimination. Mr. Jones while finding no fault with the use of such test yet when he was first named to his position he recommended a battery

of test at this point in the selection process and repeated such to Dr. Furcon when he was interrogated about alternatives to such test. The members of the Indiana Law Enforcement Training Board as individuals or as officials have no obligation under the law for prescribing or requiring a score of one hundred ten (110) on such test. The named members of the Indiana State Police Board as individuals have not nor have they in their official capacity intentionally utilized such test to discriminate against minorities or applicants for the position of trooper. Such members of the Indiana State Police Board, while they were such board members when this action was commenced on August 26, 1974, there is no showing of the length of their service to create liability for such testing by the Indiana State Police Board as to such defendants as individuals. This is to be distinguished from their liability as official members of the Indiana State Police Board for the Indiana State Police Board's breach of duty for utilizing such test.

Applicants who successfully pass the Otis Gamma Test (form C) are then subjected to a background investigation. If the applicant is an Indiana resident, the application is forwarded to the Indiana State Police Post of the geographic district of the applicant's residence. If the applicant is a non-resident of Indiana the applicant's background investigation is conducted by the police organization of the State of the applicant's residence. That District Commander of the Indiana State Police assigns a trooper of that district to make the Indiana investigation. In the past, a Detective First Sergeant from each district participated in instructional conferences and such officer was assigned by that District Commander to conduct the background investigation of applicants in his district. The position of District Detective First Sergeants was discontinued about three (3) or four (4) years ago so the instruction conference was discontinued at that time. In lieu of the conference a letter has been directed from the Personnel Section of the Indiana State Police Department to responsible personnel. A copy of the April 18, 1974 letter is attached to this entry, marked plaintiffs' deposition Jones Exhibit No. 17, and is made a part thereof. The Personnel Section invited the in-

vestigator to ask for assistance, if required. In addition oral instructions and supervision were given to the investigator by the District Commander and other experienced troopers. The background investigation phase of the hiring process required objective factual findings by the investigating trooper. The process also required subjective determinations and evaluations on the part of the investigation trooper, his District Commander, and the Personnel Officer who review the investigators findings and recommendations, and all of which is reviewed by the Personnel Board before the applicant is permitted to proceed to compete the trooper position. The investigator then makes a thorough check of all aspects of the applicant's life by interviewing past employers, present employers, church members, neighbors, educators, anyone who might have had any connection with the applicant, and two or three personal interviews with the applicant and his family. Local police agencies are contacted to determine whether the applicant has a record of any arrests (this policy has changed from time to time, that is, at one time an applicant would not be accepted for a misdemeanor or felony conviction and later changed to possible acceptance for misdemeanor convictions. Also rejection for arrest and later changed to possible acceptance for arrest), convictions, or accidents, also a check with the Bureau of Motor Vehicles of Indiana, and elsewhere for anything that would give an insight on the applicants ability to function as an Indiana State Police Officer. The investigator makes a check of the applicant's credit by contacting the local banks, credit associations and credit reporting agencies. Applicants with prior military service are checked through their local military branch to determine the circumstances their discharge. The investigator is authorized to conduct medical injuries, draft board inquiries and other privileged matters by means of a written release form signed by the applicant. The release form, the case report, and cover sheet for the case report constitute the working papers used by the investigator. The case report is a typewritten summary of the investigation. The cover sheet to the case report provides for an evaluation of the applicant by the investigator. As disclosed by the plaintiffs' deposition Jones Exhibit No.

17 (attached hereto) the face of the cover sheet has six criteria: (A) General Character and Reputation, (B) Credit Standing, (C) Sobriety, (D) Police Record, (E) Previous Work Record, and (F) Investigators' Recommendation. Under categories (A) and (B) applicants are rated either excellent, good, questionable, or unacceptable. Under category (C) applicants are evaluated as either a non-drinker, mild drinker, or heavy drinker. Under category (D) applicants are described as either having no record, a traffic record, or a criminal record. Under category (E) applicants' work is rated as either excellent, good, poor, or unacceptable. Under category (F) the investigator can rate the applicants as either excellent, acceptable, questionable, or unacceptable. A space for the investigator's remarks allows for a statement of the investigator's conclusions concerning the applicants' general fitness. The investigator is encouraged among other things to appraise the applicant on the basis "will I want to work with the applicant for the next twenty (20) years." No set of specific guidelines can possibly be devised that would anticipate all factors material and relevant to such a report and likewise material and relevant to the applicant's being a qualified trooper. The investigator is a trained fact finder and makes his report from personal knowledge after interviews with the applicant, applicant's wife, applicant's parent, after viewing the applicant's home, his motor vehicle, after viewing the applicant and his wife's demeanor, attitude and their likes or dislikes about a trooper's duties and its affect on their home life, the applicant's ability to converse along with many other factors. The investigators reports sometimes included quotes of third persons such as former employes of the applicant which were very important to the investigator and those who review the investigator's report in determining the credibility of the third person interviewed and of the investigator. Such is factual reporting and not any indication of prejudice on the part of the investigator and defendants. When an investigator rejects an applicant on the character examination the Personnel Director marks that applicant's file as "questionable" and the applicant is then passed in the processing to the physical examination. On some occasions the appli-

cant's file would be assigned to another if the questionable matter could not be checked out by the Personnel Board or by the polygraph test. The investigator was sufficiently overseen and his work reviewed so as to sift out of the selection process prejudice, if any, of that investigator. A review of the files of the fifteen (15) of the twentyeight (28) negros who had passed the Otis Gamma Test (form C) but failed the character investigation discloses that there was a reasonable basis in fact for their rejection. A troopers' ultimate task is to appear as a witness in criminal prosecutions. Any basic deficiency in the trooper's character could be detrimental to the outcome of the litigation. Any basic deficiency of trooper's character in the hands of a skillful defense lawyer will be used unmercifully and with telling effect because of the required degree of proof placed upon the State and because of the public's belief that its public servants should leave no doubt as to their servants' conduct and the accuracy of their investigations and testimony. The trooper becomes the accuser in a criminal trial and subject to being tried by the defense in trials. Whenever an arrest is made by a trooper there is the potential of the arrestee harboring an emotional resentment against the trooper at the scene of the arrest. The conduct of the trooper that would precipitate an outburst of passion or assaultive conduct by the arrestee and the reaction of the trooper to such conduct is relevant to the well being of the trooper, the arrestee and the public's right to a fair trial unaffected by misconduct, mistakes, or lack of ability of a trooper to cope with the incident. These examples among many other reasons clearly validate the need for the defendants' character investigation. The number of rejects of negros in the pertinent recorded years is due to the established fact that the quality of applicants were not being recruited from the urban areas, all as previously found in this entry. The investigation does seek out the views of both caucasians and negros to ascertain whether any militants of either race are among the applicants. The plaintiffs contend that the investigations of character, including arrest records of applicants has a disparate impact on negros because statistics show that negros comprise twentyseven and five-tenths (27.5)

per cent of the arrestees in the nation when they are only eleven (11) per cent of the population as of the year 1973; that the investigations of character including credit standings of applicants has a disparate impact on negros because statistics show that negros are worse off economically than caucasians and more likely to receive poor credit ratings. This is evidenced by the statistics that in the year 1969 there were nineteen (19) per cent of the negros in Indiana as compared to six and seven-tenths (6.7) per cent of the caucasians who were below the poverty level; the median income of the negro families was seven thousand nine hundred four dollars ($7,904.00) as compared with ten thousand one hundred seventeen dollars ($10.117.00); the 1973 unemployment rate in Indiana for negros was ten and seven-tenths (10.7) per cent while it was only three and eight-tenths (3.8) per cent for caucasians; that the investigations of character including military service discharges has a disparate impact on negros because statistics show that negros receive a lower proportion of honorable discharges and a higher proportion of the general and undesirable discharges than the caucasians with similar educational levels and aptitudes (in the fiscal year 1971 a lower proportion of honorable discharges than caucasians of similar aptitude and education; and the statistics show that ninetytwo and seven-tenths (92.7) per cent of the caucasian dischargees receive honorable discharges, while eightysix and one-tenth (86.1) per cent of the negros receive them; the statistics further show that of general discharges, caucasians receive four and two-tenths (4.2) per cent while negros receive seven and five-tenths (7.5) per cent; the statistics also show that of undesirable discharges, caucasians receive two and six (2.6) per cent while negros receive five and two-tenths (5.2) per cent; the statistics continue to show that for bad conduct discharges the caucasians received five-tenths (0.5) per cent and the negros received one (1.0) per cent; and that military authorities have commenced restructuring its discharge system in order to eliminate racial unfairness. The plaintiffs' contentions concerning the character investigations including a review by defendants of the applicant's arrest record, credit standing,

and military discharges is not based on reason or logic. The defendants did not reject or approve the applicants of either race based on such statistics or that an applicant is one of such statistics. The defendants and not the character investigator of an applicant pass judgment on the record of the applicant. The defendants in passing judgment on each applicant, caucasian and negro, look into the applicant's arrest record and the background of the surrounding circumstances of such arrest; look into the applicant's credit record and if poor, the reason therefore or the surrounding circumstances thereof; and look into the military discharges and the surrounding circumstances. The relevancy, materiality of such material or such materials have a very close relationship of vital factors of a trooper's job performance, that is, credibility, liklihood of being victims of inducement by the criminal element, and attacks on the trooper in trial and other obvious resulting effects, including the ill effects upon the trooper personally which also results in a waste of Indiana's investment in training the trooper and a breakdown in enforcement of the law generally by the losses in those cases in which that trooper was the arresting or investigating officer. The defendant, Richard Jones, individually and in his official capacity as Personnel Director of the Indiana State Police Department merely executed his ministerial duties in dealing with the background information of applications of the applicants for the trooper positions. Mr. Jones has served one (1) time on the Reviewing Personnel Committee of Personnel Board which has no continuous standing and he is not sued in such capacity. Mr. Jones had no power to and did not create the selection process of background investigations of applicants. There is no evidence that Mr. Jones practiced any discrimination toward plaintiffs.

The incumbent superintendent designated a negro trooper along with other staff members to review rejection processing of negro applications by the Personnel Director upon request of persons outside the Indiana State Police Department who were disatified with the results of a class of recruits that had been recruited by negro State Police troopers acting as recruiters all of which has been referred to in this entry. The negro trooper who participated in such re-

view saw no cause to refute the rejections and processing by the Personnel Director. The members of the Indiana Law Enforcement Training Board as individuals or as officials have no obligation under the law for reviewing such processing of the background information and practiced no discrimination against the plaintiffs. The named members of the Indiana State Police Board as individuals have not nor have they in their official capacity intentionally failed to provide for a background investigation of the negro applicants for the position of trooper. Such members of the Indiana State Police Board, while they were such board members when this action was commenced on August 26, 1974, there is no showing of the length of their service to create liability for the processing method in question of background investigations by the Indiana State Police Board as to such defendants as individuals. This is to be distinguished from their liability as official members of the Indiana State Police Board for any alleged breach of duty to plaintiffs by the Indiana State Police Board. In view of the above findings as to the challenged processing of background investigations there is no liability as to the official members of the Indiana State Police Board.

After the background investigation the next stage in the application processing is the physical examination. It is conducted as quickly as possible after the background investigation phase of the processing is complete. This is done by several physicians under the supervision of the Indiana State Police Department physician. Certain health standards have been changed through the years, such as eye requirements, height, and weight. No specific charges are made in the complaint concerning the physical examination of applicants for trooper. The plaintiffs' make no complaint of the requirements of the physical examination and the rejections of applicants but site two (2) instances in trial where medical personnel conducting the examinations disqualified negro applicants for a medical defect but approved caucasian applicants with the same medical defect. In November of the year 1969 a negro applicant for the position of State trooper was rejected for being underweight. The twentyfour (24) year old applicant's November 11,

1969 application stated he was five (5) feet eleven (11) inches (without shoes) in height and that he weighed (stripped) one hundred forty (140) pounds. This was verified by defendants and the applicant was permitted to take and did pass the adaptability test. This applicant was married and had a wife and two (2) children. The applicant was extremely thin, being five (5) feet eleven (11) inches in height and weighed one hundred thirty-six (136) pounds; the applicant prior to making application never weighed over one hundred forty (140) pounds in his life; the applicant was in debt in the approximate sum of six thousand dollars ($6,000.00), not counting what he owned on his dwelling; the applicant possessed two (2) motor vehicles, one (1) of them being a 1968 Lincoln Continental, and it was apparent that he was living above the family income; the applicant was a chain smoker; and the applicant had deformed fingers on both hands. On January 20, 1970, before any physical examination by doctors, the superintendent who preceded the defendant superintendent sent such applicant a letter advising him that he was rejected. Such letter stated, "***. After reviewing your investigation, it has been determined that you do not meet the standards prescribed for applicants seeking admission to the Indiana State Police Recruit Training School. If you care to discuss the matter further, you may come personally to the Indiana State Police Headquraters, Personnel Section, Room 304, State Office Building, 200 North Senate Avenue, Indianapolis. Office hours are Monday through Friday, 8:00 A.M. to 4:30 P.M. ***." Thereafter the rejected applicant became a poilice officer with the City of Indianapolis, Indiana in April of 1972 and at the time of trial was assigned to the vice squad of that police force. Such rejected applicant in December of 1974 weighed approximately one hundred fifty (150) pounds. The plaintiffs would have the court compare such rejection with a caucasian applicant eighteen (18) years earlier who was found to be overweight. The caucasian applicant was allowed to advance through the application process with the proviso that he lose weight. There is a substantial difference between the surrounding facts of the two (2) applications. It is one thing

to reduce weight and another to gain weight. The evidence is sparse as to the surrounding circumstances of the caucasian applicant of 1951. The evidence clearly discloses there have been differing weight as well as height requirements in different years of all applicants and none of which is preferential or detirmental to the races. The selection process for troopers was basically the same when the present Personnel Director made application to become a trooper and he was rejected because he was underweight, even though he was the next door neighbor of the then superintendent, a far removed in time predecessor of the defendent superintendent, but several years later he applied and qualified. This discloses impartial and fair application of the weight requirement. The other alleged example occurred on June 7, 1962 when a negro twentythree (23) year old applicant who had passed the adaptability test, had been processed by defendants through the background investigation and was rejected from medical findings in the physical examination conducted by three (3) doctors employed by defendants; he was then and had been since March 1960 in a cadet status with the Indianapolis Police Department; the first two (2) doctors (whose missions overlapped in examining the applicant and whose specialties were unknown to the applicant) advised him that he would need some teeth correction which if done before the commencement of the training school could be approved medically. The third doctor, who had the responsibility of making the final determination, examined the applicant and rejected him with the remarks; "Inadequate teeth for mastication, malocclusion, see above", and in addition on the form chart in another space indicated the teeth that were restorable, those that were non-restorable, and those that were missing. The applicant took the report to a Lieutenant in charge who presented it to the assembled Reviewing Committee or Personnel Board who was conducting interviews of applicants on June 7, 1962 at the same location where the physical examinations were being made by the doctors. The Committee or Board directed and the applicant was again examined by the doctor in charge the same day, after which that doctor added by way of clarification in the margin ad-

jacent to that space where he had first indicated in accordance with the key on the form chart the teeth that were restorable, those that were non-restorable and those that were missing, the following: "(1) Malocclusion, (2) Non-restorable teeth, (3) Inadequate teeth:" and he was then rejected for that reason. The applicant within a week went to a dentist, had some teeth pulled, purporting to rectify the malocclusion and a partial plate was installed in time for the training school. Atfer such teeth repair and/or restoration the applicant did not go back to the defendants for reexamination or to disclose such change in condition that would qualify him because he concluded that since he was a cadet with the Indianapolis Police Force that he would pursue that position for which he already had two (2) years of standing. It is obvious from the chart there were some unrestorable teeth and teeth problems on both sides of upper and lower jaw and it was the doctor's opinion they were "inadequate". It is true that there were other teeth that might be replaced by a plate. There was no evidence of the details of the applicant's dental work other than in the generality stated above. The plaintiffs would have the court compare such rejection with a caucasian twentyseven (27) years of age who was medically examined eight (8) years earlier. This applicant's teeth chart showed nothing wrong with his upper teeth by reason of upper prosthetic appliance, four (4) missing back lower right jaw-teeth and two (2) missing back lower left jaw-teeth; and it showed no teeth that were non-restorable; the same doctor in charge recommended on May 19, 1964 the installation of a lower partial dental prosthesus and that if carried out the applicant could be medically approved. That applicant thereafter filed with the defendants a May 25, 1964 statement of a Doctor of Dental Surgery that the applicant had appointments with him to have restorative work and a partial denture made suggesting that the entire process would take several weeks, was already started and that when completed the patient would have a full complement of teeth. That applicant was then authorized to attend and compete in the training school in the year 1964. The plaintiffs would also have the court compare such rejection with a caucasian

twentyfive (25) year old applicant eight (8) years earlier whose teeth chart showed a satisfactory upper denture prosthetic appliance; and the unsatisfactory but restorable three (3) back lower right teeth and four (4) back lower left teeth all of which were missing; the same doctor in charge recommended on February 26, 1964 a partial lower dental prosthesis installation and that if carried out the applicant could be medically approved. That applicant thereafter timely filed with the defendants a statement of a Doctor of Dental Surgery that a bridge for the applicant was being installed and which should be finished by Saturday, March 7, 1964. The applicant was then authorized to attend and compete in the training school. The evidence clearly disclosed that the facts and circumstances of the two (2) caucasian applicants do not compare with the negro applicant. The Committee on Personnel or Personnel Board relied on the medical judgment of a doctor and the plaintiffs offered no medical evidence to refute the defendants' doctor other than that applicant's lay beliefs that subsequent dental work cleared up the findings that the applicant had inadequate teeth for mastication and had no malocclusion after pointing out the specific teeth that were restorable, those specific teeth that were non-restorable, and those that were missing. It is observed that in the applicant's memory that the only defect that caused his rejection by the defendants' doctor was mistaken and in conflict with the medical records in evidence. The defendant, Richard Jones, individually and in his official capacity as Personnel Director of the Indiana State Police Department had no legal obligation in dealing with the medical examination and merely executed his ministerial duties in dealing with such medical examination of applicants. There is no evidence that Mr. Jones practiced any discrimination toward plaintiffs. The members of the Indiana Law Enforcement Training Board as individuals or as officials have no obligation under the law for such medical examination of applicants and processing the results thereof and practiced no discrimination against the plaintiffs. The named members of the Indiana State Police Board as individuals have not nor have they in their official capacity intentionally failed to provide for a medical exami-

nation of applicants for the position of trooper. Such members of the Indiana State Police Board, while they were such members when this action was commenced on August 26, 1974, there is no showing of the length of their service to create liability for the medical examination processing in question by the Indiana State Police Board as to such defendants as individuals.

After the applicant files his application and meets the initial standards all in accordance with the statutes, rules and regulations, previously referred to in this entry, that is, the applicant passes the adaptability Otis Gamma Test (form C), the background investigation is completed, and passes the physical examination conducted by the defendants' designated doctors, the applicant must then submit to and pass an interview with the Personnel Committee or Board. Preparatory for such interview the accumulated files of each applicant eligible for such interview are reviewed by the Personnel Officer and he marks those areas of the respective files that are "questionable". These are made known to the Personnel Committee or Board immediately previous to each applicants appearance for interview. In previous years the Personnel Director served the Committee or Board by presenting such data as areas for questioning of the interviewed applicant. The Personnel Director served in the additional capacity as a voting member of the interviewing body on the most recent train-class. The interviewing body, as previously explained in this entry, is not a permanent body and automatically disbands upon the completion of its mission for a given training class. The applicant is assigned a specific time and date on which to appear in a closed door session. The applicant is in front of the Board in a formal atmosphere and the interviewers ask him specific questions. Immediately prior to the applicant's entry into the interview room the Personnel Director briefs the interviewers on the applicant by reciting the date of birth, educational background, number of dependents, job record, anything contained within the investigation that might bear looking into as pointed out previously but the Personnel Director makes no recommendation. The interviewers do not have any part of the applicant's file, nor any other summa-

ry of such file, but they can request the file but such is unusual that they ask for anything in the experience of the Personnel Director. The interviewers are informed of the applicant's score on the Otis Gamma Test (form C) and only extremely high or low academic records of high school or college might be continued. The interviewers are furnished with an oral appraisal form upon which they score an applicant between sixty (60) and one hundred (100) which is recorded by the members immediately following an interview, sometimes before and sometimes after the applicant leaves the room. This is done without consultation or discussion and represents an evaluation on the interview alone. In the experience of the Personnel Director it has been unusual that there be more than a ten (10) point variance between high and low score. The scores are tallied, the high score and the low score are stricken, the score is then divided by four (4), when there six (6) members of the Personnel Committee or Board and thus derive an average score. The oral appraisal form has been in use for many years. No guidelines are needed for its use by the interviewers for the reason that, for example, the average length of service of the six (6) members of the last Personnel Committee or Board was twentyfour (24) years and they have expertise in evaluating humans. The factors recorded on the form of "Physical Appearance and Grooming," "Voice and Speech", "Ability to Express Ideas", "Emotional Reaction and Poise", "Friendliness", and "General Attitude and Interest" are not scored individually. Each factor has no independent weight unless it represents an outstanding deficiency. All factors are considered equally important. The applicants are ranked according to their standing on this score and their ranking controls the order in which they are allowed to enter the training school. The areas in which the applicants are evaluated are sufficiently defined and are both objective and subjective and a correct result depends upon the character and ability of the Personnel Committee or Board members and of the applicant's presentation. The defendant, Richard Jones, individually and in his official capacity as Personnel Director of the Indiana State Police Department for the

most part merely executed his ministerial duties and to a limited extent executed duties involving executive judgment when he submitted summaries of the guidelines filed to the Personnel Committee or Board information interviewing an applicant and pointed out "questionable" items in the files as well as "extremely" high or low academic records of the applicants. Mr. Jones served one (1) time on the Reviewing Personnel Committee or Board which has no continuous standing and he is not sued in such capacity. Mr. Jones had no power to and did not create the interview process before the Personnel Committee or Board. There is no evidence that Mr. Jones practiced any discrimination toward plaintiffs. The superintendent of the incumbent administration designated a negro trooper along with other staff members to review files of negro applicants upon request of persons outside the Indiana State Police Department who were disatisfied with the results of a class of recruits who were recruited by negro State troopers which was previously referred to in this entry. The negro trooper who participated in such review saw no cause to refute the rejections and labeling of "questionable" items in the applications of certain negro applicants. The members of the Indiana Law Enforcement Training Board as individuals or as officials have no obligation under the law for reviewing such processing of the interview before the Personnel Reviewing Committee or Board and practiced no discrimination against the plaintiffs. The named members of the Indiana State Police Board as individuals have not nor have their official capacity intentionally failed to provide for a valid, fair and unbiased method of interview and scoring of negro applicants for admission to the training school. Such members of the Indiana State Police Board, while they were such board members when this action was commenced on August 26, 1974, there is no showing of the length of their service to create liability, for the processing method in question of the interview selection of applicants by the Personnel Reviewing Committee or Board so authorized by the Indiana State Police Board, as to such defendants as individuals. In view of the above findings as to the challenged processing of background investigations there is no liability

as to the official members of the Indiana State Police Board.

Following the Personnel Committee or Board interviewing processing of applicants for the position of trooper for the last two (2) years, or the last two (2) training schools, the last phase of the selection process for entry into such school has been the polygraph examination of those applicants who have passed their interview. The polygraph examination is conducted by trained technicians from within the Indiana State Police Department. The objective of the polygraph examination is to determine the character of the applicant in three (3) general categories, honesty, use of narcotics, and morals, however the technician may pursue other matters in reaction to answers of the examined applicant. Two classes of applicants result from this test given by the polygraphist, acceptable and questionable. If the report is acceptable the applicant is advised by the Personnel Director and is the report is questionable the applicant is advised and that he would be contacted later. The final decision on those applicants in a questionable category are made by the superintendent and the available executive staff (Lieutenant Colonels and Division Commanders). No unacceptable applicants have been found by this test. The polygraph test was prompted by the prevalence of narcotic users among the youths of today plus the fact that the test has been accepted by other police agencies. The decision to use such test was that of the superintendent. The polygraph test resolved that which could be determined in a battery of tests. This test is acceptable and presents no discrimination issue with respect to minorities. The defendant, Richard Jones, individually and in his official capacity as Personal Director of the Indiana State Police Department had no duties and performed no acts with respect to the polygraph test. The members of the Indiana Law Enforcement Training Board as individuals or as officials had no duties and performed no acts with respect to the polygraph test. The named members of the Indiana State Police Board as individuals have not nor have they in their official capacity provided for an improper discrimination in testing by

use of the polygraph examination. Such members of the Indiana State Police Board, while they were such board members when the action was commenced on August 26, 1974, there is no showing of the length of their service to create liability for the establishing and conducting of the polygraph test in question by the Indiana State Police Department.

The first negro to be employed by the Indiana State Police Department as a trooper was in the year 1962. Such negro has received no promotions in rank to the date of trial and is still a trooper. After serving five (5) years time-in-grade such negro trooper applied on March 19, 1968 for a temporary or spot promotion from trooper to sergeant to fill an announced vacancy in the Intelligence Section of the Indiana State Police Department. The vacancy was filled by another qualified person. Such negro trooper applied on August 30, 1968 for a permanent promotion from trooper to sergeant to fill an announced vacancy in the Operations Center. The vacancy was filled by another qualified person. Such negro trooper applied on October 28, 1968 for a permanent promotion from trooper to sergeant to fill an announced vacancy in the Director of Safety Education in District fortyfour (44) which district includes the City of Indianapolis. The vacancy was filled by another qualified person. Such negro trooper applied on January 14, 1969 for a change of position from the duties of a trooper to that of a trooper having the duties and title of Assistant Director of Safety Education in District fortyfour (44). He was accepted and filled this position until July 2, 1969 when he voluntarily resigned and resumed the regular duties of a trooper. Such negro trooper applied on April 14, 1969 for a temporary or spot promotion from trooper to sergeant to fill an announced vacancy of Aide to the Governor of Indiana. The vacancy was filled by another qualified person. It is not unusual for caucasian troopers to make multiple applications for promotion and not be accepted. Such negro trooper has not applied for promotion since the year 1969. This was a serious conceding mistake on his part. Such negro trooper has continuously been assigned since his appointment to the area of his pre-appointment residence. He has sought and is

continuing to obtain an education on a part-time basis at the Indiana University-Purdue University at Indianapolis and will graduate with a bachelor's degree late in the year 1975. The second negro was employed in the year 1964. In the year 1974, ten (10) years after his employment, he was promoted from the rank of trooper to sergeant. When promoted, he had completed his bachelor's degree in his spare-time and was in his final semester at the Indiana University Law School of Indianapolis seeking a Juris Doctor Degree and had served several months as the defendant's legal advisor. Two (2) other negro troopers of the defendants have never been promoted. The negro troopers have been critical of the defendants' recruitment practices and promotion practices. The defendant has never conducted a validation study with regard to the job relatedness of the promotion policy requiring five (5) years service in a trooper position before such trooper could be eligible for a promotion to a line position. The negro troopers have not been assigned to areas of duty under the same plan as the caucasian troopers. Caucasian troopers are assigned to an area removed from the area of their residence when employed but negro troopers are so assigned. Separate treatment for negro troopers, even though favorable in that it permits the negro trooper to live in the same community when appointed has a detrimental effect on his being advanced by way of promotion as is the caucasian trooper, in that, the caucasian trooper experiences the full obligations of a trooper and as thus exposed tends to be more qualified with more varied experiences than the negro trooper. The employer cannot help but be practical when it appraises the personnel and credits experienced personnel over inexperienced personnel. The resulting negro troopers' manifest irritations at being passed over in promotions and the too few negro troopers added to the defendants lower appraisals of the negro. All of which, among other things, has prevented promotions because of race from administration to administration of the Indiana State Police Department. The first promotion of a negro trooper is credited to the present administration. The first negro trooper employment is credited to a recent earlier administration of the depart-

ment. Nevertheless, each administration is responsible to perform all legal obligations and avoid discrimination. The current administration of the department is committed to affirmative action and must proceed with the implementation as it has agreed to do and under the law is required to do. The defendant, Richard Jones, individually and in his official capacity as Personnel Director of the Indiana State Police Department had nothing but ministerial duties in connection with the promotions. The marchers of the Indiana Law Enforcement Training Board as individuals or as officials had no duties and performed no acts with respect to promotions. The named members of the Indiana State Police Board as individuals were board members when the action was commenced on August 26, 1974 but there is no showing of the length of their service to create liability for the promotion processing.

The next phase of the competition of the applicant for the position of trooper has been the Training School conducted on the Bloomington, Indiana campus of Indiana University. In more recent years the Training School has been under the management of the defendant, The Indiana Law Enforcement Training Board. Its legal existence has been referred to in this entry in describing the historical development of the Indiana State Police Department. The role of the defendant, Richard Jones, as Personnel Director of the Indiana State Police Department, in the selection process generally may be said to conclude at this point. He has been a lecturer at the Training School and he continues to ministerially process all personnel matters of the trainees, including responding to inquiries of the trainees and all trainee terminations such as voluntary resignations which from experience commence in the first day of the school and such as involuntary terminations. After the trainee's successful completion of the Training School he is subjected to an Interview with the superintendent and members of the Indiana State Police Board and if he successfully passes such interviews the trainee is employed as a trooper in a one (1) year probationary status which may be extended all as explained in this entry under the historical development of the Indiana State Police Department. The Law Enforce-

ment Training Board which came into existence July 1, 1967 is a certifying agency and it operates the Law Enforcement Academy. Since 1935 the Indiana State Police conducted its own Training School and such school is certified along with its instructors and facilities by the Law Enforcement Training Board in recent years. The minimum standards which the Indiana State Police Training School was required to follow were adopted July 6, 1972 by the Law Enforcement Training Board. These minimum standards were adopted after an eighteen (18) months study by the Curriculum Committee composed of qualified persons for such an undertaking and from experience in the conduct of classes from June of the year 1969 in dealing with trainees from all law enforcement agencies in the ninetytwo Counties of the State of Indiana of all races and ages, experienced police officers and non-experienced police officers. These minimum standards and procedures, with the exception of the Otis Gamma Test (form C) as executed by the Indiana State Police Department have been reviewed in this entry and found to have been properly executed without racial discriminatory bias and without a racially discriminatory impact on minorities. It was demonstrated by the evidence that such minimum standards and procedures were in practice validated to establish predictive validity as a measure of actual to performance. The Training School of the Indiana State Police Department in the past consisted of two hundred sixty (260) hours of mostly classroom training. The trainees are required during the six (6) weeks training to remain together in sequestered dormitory manner except for some brief liberty time. Temporary plans call for four hundred (400) hours of classroom training in the future. Fifty four (54) hours of the two hundred sixty (260) hours are devoted to a law course study. Other courses include psychology and how to get along with people, general police subjects, firearms training, the art of self defense, physical exercise, and other courses. The academic part of the course is a major part of the school curriculum and to compete the trainee must be successful in that part of the curriculum. The successful trainee receives college credits from Indiana Uni-

versity for such studies. The curriculum is practically accepted to the needs of an Indiana State Police Officer and successful completion of such study is validly predictive of the measure of his actual job performance. There is no evidence of racial discriminatory bias in the conduct of such Training Schools and there is no evidence of such Training Schools having a racially discriminatory impact upon minority applicants for the position of trooper.

The Indiana State Police Board and the superintendent conduct an interview with each member of the Training School after completion. A State Police staff member who has been present with the class is normally requested to be present and answer detailed questions of the board members. The board rotates the chairman's duties from interview to interview with the cadets. The board reviews the personnel file of each trainee cadet, academic standard at the training school and school staff rating. The experience has been that a few trainees have not been approved although the January 1974 class were all approved in the interview. There is no scoring system and the board votes "yes" or "no" on the appointment of the trainee and the majority vote prevails. The superintendent has no vote. There is no evidence that such interviews have been discriminatory to minorities.

When the applicants filed their applications they were required by the defendants to file their statement of political adherence. The form prepared by the defendants reads as follows:

"NOTICE TO PROSPECTIVE EMPLOYEES
OF
THE INDIANA STATE POLICE DEPARTMENT

The State Police Act of 1954 requires that the Department be kept in political balance, i.e., that not more than one-half of the employees in each rank, grade, or position be adherents of any one political party. When new Troopers or other personnel are employed, this law requires that insofar as is consistent with the satisfaction of prescribed standards and prerequisites, the political balance in the grade of Trooper or whatever other position is involved be maintained. This

same law also prohibits any employee of the Department from participating in any manner in the activities or interests of any political campaign other than by exerting his official duties and varies at the election. (Acts of 1945, Chapter 341, Section 4, Page 1622; Burns, 1952 Replacement, Section 47–849).

STATEMENT OF POLITICAL ADHERENCE

I have read and I understand the paragraph above, I understand that it is necessary for me, as a prospective employee of the Indiana State Police Department, to furnish the Department with a statement of my political adherence in order that the provisions of the law may be complied with should I be employed in the future by the Indiana State Police Department. For the purpose stated above I place myself on record as an adherent of the _____ Party.

Signature _____
Date _____"

It is noted that the applicants are not required to declare their political party affiliation as either Republican or Democratic but only to state the name of the party to which they are adherents. History discloses that a political party is not permanent and the members of known political parties fluctuate. History discloses that the majority of plaintiffs' class in the past in Indiana have been adherents of one of the existing major political parties and in more recent history the majority of such class have been adherents of another of the existing major political parties. The history of the Indiana State Police Department already referred to in this entry points up the sound governmental objective of the Indiana General Assembly's decision to prohibit the appointment by the Indiana State Police Department of adherents of any one (1) political party to a rank, grade or position which contains employees of more than one-half (½) of whom are adherents of that same political party. The statute as applied by the defendants also becomes a factor in the defendants' selection process at the point where candidates are selected for entrance into the Training School (only if the number accepted qualified prospects for that school is greater than the planned number of trainees of a given school class). The Indiana State Police of today was

organized out of the political excesses in Indiana in the 1920's, as previously referred to in this entry. After a few years of operation under the Act, history discloses, that the personnel of the Indiana State Police Department were almost one hundred (100) per cent adherents of one (1) political party. The leaders of both major political parties sought to and did rectify this overleading of the Indiana State Police Department that could result in a use of the agency for other than its mission or could be destroyed by way of political retaliation. Indiana citizens were entitled to talented police leadership regardless of the political affiliation of the administration in power so that a new administration could reach into the ranks or in the retired ranks of the State Police Department for that police leadership of its choice. No session of the General Assembly of Indiana since the early 1940's has sought to change such provision of the Indiana State Police Act even though the political majority of the Indiana General Assembly and the State Executive—Administrative branch have changed from time to time. The plaintiffs evidence concerning plurality of voters in 1974 included a privately paid polling agency's report to a political candidate. Such evidence was so ridiculously one-sided that it is wholly unreliable. The results of the election further disclose such unreliability as that candidate received fifty plus (50.+) per cent of the total vote cast. Since the year 1940 there have been four (4) governors of one (1) of the major parties and five (5) of another major party. The contested provision of the statute has no race prejudice objective and has never been executed by the defendants with such an objective. The plaintiffs, however, allege such provisions of the statute has a racially discriminatory impact against negro and other minority applicants for employment and promotion, and deters their adherence to, much less membership in, any political party. There is no evidence of an impact against plaintiffs by way of deterring their adherence to, or membership in any political party. The impact, if any, of such provisions of the statute are permissible for the good of the State of Indiana. The plaintiffs have not raised an issue as to the political composition of the Indiana State Police Board. The statute

previously referred to, requires that the Indiana State Police Board membership must consist of six (6) members, not more than three (3) of whom shall belong to the same political party. It is observed that this is consistent with Indiana's plan of composition of many of its executive administrative boards. The plaintiffs' evidence fails to disclose the percentage of the plaintiffs' class that are affiliated with the political parties or without any affiliation. The eligible applicant must be within a certain age group (21–34) women they are but a class within the total caucasian and negro citizens in Indiana. The relative percentage of the eligible negro age group to the caucasian age group is unproven, that is, that group that are high school graduates or equivalent and possess the other factors of qualification before it can be said that there is a basis for the charge of discriminatory impact. The public benefit to the citizens of Indiana as a whole as well as all minorities from the challenged established policy of the Act is apparent. There may be other theories of personnel selection to operate a police organization such as the various forms of non-partisan plans that are in use. Such plans are not without their deficiencies and it is the privilege of the State of Indiana to select a valid plan. The governor of Indiana and the head of the executive branch of the government in Indiana must possess the power to execute the laws of Indiana must possess the power to execute the laws of Indiana through personnel including a police department. There is no racial impact from this Act. The plaintiffs do not attack the political equality provision on any other ground than racial discrimination. The impact is on the political party of which the plaintiffs do complain and is not discriminatory to the negro applicant. The provision applies equally to the negro applicant for the position of trooper in all political parties. A benefit could be the result in the selection process for attendance at the training school for trooper and for appointment after such schooling, in that, the negro applicants who plaintiffs claim are dominantly members of one (1) political party only compete with applicants who are members of his own political party, a much less number than the whole group of applicants of all political parties, as opposed to the

negro applicants competing with the entire group of applicants of all political parties. This much can be said of the advantages and disadvantages of promotion during employment by the defendants. In the last two (2) years or last two (2) schools no applicant was excluded from the school because of the political limitation requirement because there were insufficient qualified applicants to pass all phases of the selection process.

The plaintiffs and others similarly situated have suffered irreparable injury as a result of the defendants' acts of commission and omission as found in this entry to have in the past and present racially discriminated in their employment practices. The plaintiffs have no adequate, plain and speedy remedy at law.

The action is based upon past and present racially discriminatory employment practices of the defendants and the establishment of racially discriminatory minimum standards for applicants for law enforcement training in the State of Indiana by the defendants in violation of the rights secured to the plaintiffs and the amount in controversy for each plaintiff exceeds ten thousand dollars (10,000,00) exclusive of interest and costs. The plaintiffs by commencing their action by-passed the U.S. Equal Employment Opportunity Commission's Administrative proceedings for the reason that such proceedings have been generally unable to cope with a situation where emergency, preliminary relief is required to prevent irreparable damage; for the reason that the defendants intended to proceed with an all caucasian training class to fill fiftytwo (52) current openings, as alleged in the complaint, in the Indiana State Police Department for troopers, preliminary relief was necessary to either preserve the status quo or, in the alternative, require an affirmative hiring plan; because defendants are public employers their discriminatory acts prior to 1972 could not be the basis of a claim; the only emergency relief available from such proceedings was that of "status quo"; and if the defendants made a compelling case for filling the fiftytwo (52) openings immediately,the court in the emergency proceeding would be unable to order an administrative hiring plan. The plaintiff, National Association for the

Advancement of Colored People, has made a good faith effort through a series of meetings with the defendants, as late as August 13, 1974, to resolve the matter through negotiation; only after it became apparent that a negotiated settlement was not possible and the plaintiffs became aware of the defendants' plans to proceed with an all caucasian training class to fill the fiftytwo (52) openings, did plaintiffs proceed with this action; and at that time the need for relief was so urgent that the plaintiffs reasonably concluded that the only immediate court action could provide such relief. After the commencement of this action on October 10, 1974 the plaintiffs, National Association for the Advancement of Colored People and Bruce Bailey, filed a charge of discrimination against the named defendants with the U.S. Equal Employment Opportunity Commission who deferred the charges to the Indiana Civil Rights Commission and on October 10, 1974 the Indiana Civil Rights Commission waived jurisdiction and sent the charges back to the U.S. Equal Employment Opportunity Commission. On November 4, 1974, the director of the Indianapolis district office of the U.S. Equal Employment Opportunity Commission notified the U.S. Department of Justice that it would not be possible to investigate and conciliate the charges within one hundred eighty (180) days and therefore recommended that the complainants be issued the statutory Notice of Right to Sue. On November 6, 1974 the plaintiffs received a Notice of Right to Sue from the U.S. Department of Justice. The plaintiffs do not seek an injunction as to the enforcement of the provisions of Indiana Code 1971 Section 10–1–1–4 (Burns Code Ed. 1974).

The Court has jurisdiction of the parties and subject matter of the action pursuant to Title 28 U.S.C. Section 1343(3) and (4) and, with regard to the claims under Title VI of the Civil Rights Act of 1964, pursuant to Title 42 U.S.C. Section 2000d–2; pursuant to Title 28 U.S.C. Section 1331 as the amount in controversy for each plaintiff exceeds the jurisdictional amount. The Court is authorized to issue a declaratory judgment pursuant to Title 28 U.S.C. Sections 2201 and 2202. The plaintiffs had a reasonable excuse for by-passing the United States Equal Employment Commis-

sion's proceedings and filing this action on August 26, 1974 pursuant to Title VII of the Civil Rights Act of 1964 (Title 42 U.S.C. Sections 2000e et seq.) and proceeding directly under Title 42 U.S.C. Sections 1981 and 1983 because, the United States Equal Employment Opportunity Commission administrative process under Title VII is generally unable to cope with a situation where emergency, preliminary relief is required to prevent irreparable damage; because of the fact that the defendants intended to proceed with the training class for which preliminary relief was necessary either to preserve the status quo or in the alternative, required an affirmative hiring plan; because the defendants were public employers and any relief the plaintiffs could obtain order Title VII would have to be pursuant to the 1972 Amendment to the Act which was not effective until March of 1972 and the plaintiffs could not obtain complete relief under Title VII for the discriminatory acts occurring before the year 1972 and any emergency relief pursued by the United States Equal Employment Opportunity Commission under Title VII would have to be pursuant to Section 706(f)(2) of the Act, Title 42 U.S.C. Section 2000e-5(f)(3) which provided for only "status quo" relief; and if the defendants made a compelling case for filling the fifty-two (52) openings immediately, the Court in an emergency proceeding under Section 706(f)(2) would be unable to order an affirmative hiring plan. The action was commenced only after the plaintiff, National Association for the Advancement of Colored People, made a good faith effort to resolve the matter through negotiation with the defendant, Richard Jones, individually and in his official capacity as Personnel Director of the Indiana State Police Department, and the need for relief was urgent. The Court also has jurisdiction over this matter as of November 6, 1974 pursuant to Title VII of the Civil Rights Act of 1964, Title 42 U.S.C. Section 2000e-5(f)(3), when the United States Department of Justice issued its Notice of Right to Sue to the plaintiffs, Bruce Bailey and the National Association for the Advancement of Colored People, which was within a period shorter than one hundred eighty (180) days as authorized by Section 84.3(a) of the United States Equal Employment Opportunity Compliance Manual.

The plaintiffs have maintained the burden of proving the essential legal elements and the alleged facts of each legal element of each of the eight (8) counts of complaint as found above as to the defendants, Robert L. DeBard, individually and in his official capacity as Superintendent of the Indiana State Police Department; Norman R. Reeves, David J. Allen, E. William Schilling, Garth Whipple, John Kendall, and John Zentz, all in their official capacities as Members of the Indiana State Police Board; and The Indiana State Police. The standards and procedures of the above named defendants and of their predecessors in recruiting caucasian applicants for the position of Trooper and in not consistently and effectively recruiting negro and non-caucasian applicants for the position of Trooper as expressly found in this entry, and the procedure and requirement of the above named defendants in the use of the Otis Gamma Form C written examination which has not been professionally or otherwise validated to establish its predictive validity as a measure of actual training performance, probationary Trooper performance, and actual job performance of a Trooper all as expressly found herein; and the standards and procedure and requirements of the above named defendants in the promotions of probationary Troopers and from positions within the rank of police line officers have not been professionally or otherwise validated to establish their predictive validity as measures of actual job performance all as expressly found herein, each of which have or may have had (as in the matter of the Otis Gamma Form C test and promotion criteria which may prove nonprejudicial if a validation study be made) a discriminatory impact upon negro and other non-caucasian citizens eligible to make application for the position of Trooper with defendants and eligible for promotion from position of probationary Trooper and eligible for probation from positions within the ranks of police line officers. The above named defendants have thus discriminated against plaintiffs and the members of their class in violation of rights secured them by the Thirteenth and Fourteenth Amendments to the Constitution of the United States of America; in violation of rights secured to them by Title 42 U.S.C. Sections 1981,

1983, 1985(3), 1988, 2000d et seq., 2000e et seq. and 3766(c) and the regulations promulgated thereunder as Title 28 C.F.R. Sections 42.201–42.206 and 42.301–42.308. The plaintiffs have not maintained the burden of proving the foregoing legal elements and alleged facts of such legal elements as to the defendants, Robert L. DeBard in his official capacity as Chairman of the Law Enforcement Training Board; Richard Jones, individually and in his official capacity as Personnel Director of the Indiana State Police Department; Norman R. Reeves, individually; David J. Allen, individually; E. William Schilling, individually; Garth Whipple, individually; John Kendall, individually; John Zentz, individually; and the following defendants each as individuals and in their official capacity as members of the Indiana Law Enforcement Training Board, Evan H. Brinager, Robert R. Brown, Emory M. Bunnell, Harold Larage, William F. Lawler, Jr., Lee E. Miller, Grover C. Osborne, James R. Peva, George F. Rapp, M.D., and George W. Wise; and The Indiana Law Enforcement Training Board.

The plaintiffs are entitled to a delcaratory judgment declaring the acts and practices of those defendants and their predecessors that have been declared in violation of certain provisions of the Constitution, laws and regulations. The plaintiffs are entitled to the requested injunction against the defendants found to be in violation of plaintiffs' rights pending the consumation of the trial of the severed issues of the remedies to be adjudged and ordered.

The plaintiffs have not maintained the burden of proving the essential legal elements and the alleged facts of the remaining issues of the pleading as to all defendants and the defendants are entitled to a judgment of partial dismissal of the complaint with prejudice as to such unproved issues of the pleadings.

The action is continued and the severed undisposed of issues of the action are hereby scheduled for trial on the 1st day of October, 1975 at 9:30 AM o'clock at the United States Court House in the Indianapolis Division of the United States District Court for the Southern District of Indiana.

The parties are ORDERED to submit a proposed judgment entry in accordance with this judgment.

Dated this 31st day of July, 1975.

Cale J. Holder, District Judge,
United States District Court,
Southern District of Indiana

April 18, 1974

FROM: Richard W. Jones, Lieutenant
Personnel Section

TO: All Personnel Concerned

SUBJECT: Investigation of Trooper Applicants

Due to the fact that we have a large number of applicants to process, it is requested that the application and investigation be returned as soon as it is completed, rather than waiting until all investigations are completed.

It is requested that all investigators be thorough and concise in this process. It is vital that you explore all facets of the applicant's life, leaving no stone unturned.

To aid the investigator the following recommendations are made:

1. Do not devote too much time to his high school record if he is from a large school. Teachers would probably not remember him, and graduation has already been verified.
2. Check for areas marked in red as well as notes on the face of the application. These are questionable areas as far as we are concerned.
3. Recheck arrest record and accident frequency. If, in your opinion, the record is poor, or not as indicated, call us for an opinion.
4. All Selective Service classifications of 1–Y should be checked. This classification indicates a physical, moral, or mental problem. Ask the applicant about the reason.
5. The personal interview should be conducted as quickly as possible. Most recommendations, made by the investigator for rejection, are based upon this phase of the program.
   You will provide the applicant with a release form when you interview him. This release will provide you with the authority to check medical, selective service, and credit records.
6. Do not waste time on investigation if you discover that the applicant is totally unacceptable.

7. If the applicant's eyes do not meet our minimum requirement of 20/40, advise the applicant that he is eliminated from further consideration and return the applicant's file to the Personnel Section.
8. Each investigating officer will check local police agencies for arrest record and accident record of the applicant. *Do not* request this information from Headquarters. Records Division will check their files for information on all applicants; however, additional information is always available at a local level that sometimes is not in our central files.

Call me at Microwave #363 for any assistance you may require.

Richard W. Jones
Lieutenant

RWJ:ds

REPORT OF CHARACTER INVESTIGATION

.SSIGNED_____ NAME_____

)UE_____ ADDRESS_____

)OMPLETED_____ CITY_____

TIGATOR_____ COUNTY_____

_____

_____

eneral Character and Reputation
) Excellent ( ) Good ( ) Questionable ( ) Unacceptable

redit Standing
) Excellent ( ) Good ( ) Poor ( ) Unacceptable

obriety
) Non-drinker ( ) Mild drinker ( ) Heavy drinker

olice Record
) Nor record ( ) Traffic record ( ) Criminal record

revious Work Records
.) Excellent ( ) Good ( ) Poor ( ) Unacceptable

nvestigator's Recommendation
:) Excellent ( ) Acceptable ( ) Questionable ( ) Unacceptable

_____

_____

[illegible]: Brief written statement of applicant's general [illegible]
as established by the character investigation.
(Reverse side of this sheet may be used if necessary.)

August 18, 1975
Bruce Bailey
2115 West 10th Place
Gary, Indiana

Mr. Herbert C. Rice, Director
Office of Civil Rights Compliance
Law Enforcement Assistance Administration
United States Department of Justice
Washington, D.C. 20530

RE: Suspension of LEAA funding to the Indiana State Police Department

Dear Mr. Rice:

My name is Bruce Bailey. I am the lead plaintiff in *Bailey* v. *DeBard*, No. IP 74-458-C (S.D. Ind., filed Aug. 26, 1974), a case challenging the unlawful employment discrimination in the Indiana State Police Department.

On July 31, 1975, the Court entered a Memorandum Opinion and Judgment in which it declared unlawful: the State Police Department's use of its written tests; the Department's promotion procedures; and the Department's recruiting practices. The Court, however, has not yet entered any injunctive relief, instead, it has set October 1, 1975, as the trial date to determine the nature of the injunctive relief which should be ordered.

In its Memorandum Opinion and Judgment, the Court held that the Indiana State Police Department and its officials have "discriminated against plaintiffs and the members of their class in violation of rights secured to them by the Thirteenth and Fourteenth Amendments to the Constitution of the United States of America; in violation of rights secured to them by Title 42 U.S.C., Sections 1981, 1983, 1985 (3), 1988, 2000d et seq., 2000e et seq. and 3766(c) and the regulations promulgated thereunder as Title 28 C.F.R., Sections 42.201-42.206 and 42.301-42.308." Since no injunctive relief has yet been entered and fully complied with, the Indiana State Police Department continues to be in violation of the aforementioned laws.

Enclosed for your convenience is a copy of the Court's Memorandum Opinion and Judgment.

In accordance with the Court's findings, I hereby demand that you immediately suspend all LEAA funding to the Indiana State Police Department and that you initiate administrative proceedings to recover all LEAA monies already unlawfully spent by the Indiana State Police Department.

Sincerely,

Bruce Bailey

BB:mab
encl.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

---

75 Civ. 1444
Judge Corcoran

NATIONAL BLACK POLICE ASSOCIATION, ET AL.,
PLAINTIFFS,

v.

RICHARD W. VELDE, ET AL., DEFENDANTS.

AFFIDAVIT

State of Iowa)
) ss.
County of Polk)

KRISTEN HEEMSTRA, being duly sworn, deposes and says:

1. I am a named plaintiff in the above-entitled case.

2. I am a female citizen of the United States and a resident of Altoona, Iowa.

3. I have been denied employment by the Des Moines, Ames, and Newton [Iowa] Police Departments.

4. The Des Moines Police Department employs approximately 360 sworn patrol officers, only one (or approximately .3%) of whom is a female.

5. For at least the past five years, to and including the present, all applicants for employment as sworn police officers with the Des Moines Police Department have been required to meet a minimum height requirement of 5'9" and a minimum weight requirement of 150 lbs. These requirements have a sexually discriminatory impact upon female applicants. Neither of these requirements has been professionally validated to determine its validity, predictive or

otherwise, as a measure of job performance for the job of patrol officer, nor have the requirements been shown to be of operational necessity to the performance of that job.

6. The Ames [Iowa] Police Department employs approximately 27 sworn patrol officers, of whom none is a female.

7. For at least the past five years, to and including the present, all applicants for employment as sworn police officers with the Ames Police Department have been required to meet a minimum height requirement of 5'9" and a minimum weight requirement of 160 lbs. These requirements have a sexually discriminatory impact upon female applicants. Neither of these requirements has been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the job of patrol officer, nor have the requirements been shown to be of operational necessity to the performance of that job.

8. The Newton [Iowa] Police Department employs approximately 25 sworn police officers, of whom none is a female.

9. For at least the past five years, to and including the present, all applicants for employment as sworn police officers with the Newton Police Department have been required to meet a minimum height requirement of 5'9" and a minimum weight requirement of 150 lbs. These requirements have a sexually discriminatory impact upon female applicants. Neither of these requirements has been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the job of police officer, nor have the requirements been shown to be of operational necessity to the performance of that job.

10. I received an AA degree from Des Moines Area Community College in May, 1974. My major was Law Enforcement, and I graduated with a cumulative grade point average of 3.98 (on a scale of 0.00–4.00; 4.00–straight A). A former high school basketball player, I stand 5' 8½" in height and weigh 130 lbs.

11. Since July 15, 1974, I have been employed as a Police Matron with the Polk County [Iowa] Sheriff's Department.

On October 9, 1975, I was assigned to the uniform patrol division of same department.

12. Anticipating my May, 1974, graduation, in January, 1974 I sought to apply for employment as a patrol officer with the Des Moines Police Department. In January, 1974, I completed a pre-application form on which I listed my height as 5'9". After reviewing my pre-application form, a representative of the Department sent me to the Ident Department to have my height measured. I was measured as 5'8-½", and was thereafter advised by a representative of the Department that I was too short to formally apply to be a patrol officer.

13. Thereafter, in February, 1974, I filed a charge with the Iowa Civil Rights Commission, and in March, 1974, with the EEOC alleging employment discrimination based upon sex against the Des Moines Police Department.

14. Several years earlier, on April 28, 1972, a similar charge had been filed with the Iowa Civil Rights Commission by another rejected applicant, Nancy Moore, against the Des Moines Police Department and Civil Service Commission alleging sex discrimination in their use of the 5'9" minimum height requirement. Shortly thereafter, an Assistant Attorney General and attorney for the Iowa Civil Rights Commission spoke by phone with Stephen Glassman, a representative of LEAA's Office of Civil Rights Compliance, urged him to initiate an investigation against the Des Moines Police Department, but was advised by Mr. Glassman that no such investigation would be or could be undertaken as Iowa was too low a priority for LEAA's Office of Civil Rights Compliance. Although the Iowa Civil Rights Commission, on Ms. Moore's complaint, ultimately held the 5'9" requirement to be sex discriminatory and ordered the Department to eliminate the height requirement, its order was subsequently mooted on appeal in the state courts.

15. I also applied for but was rejected from employment as a patrol officer with the Ames Police Department. In April 1974, I wrote to the Ames Police Department inquiring about employment as a patrol officer. By return mail I

received a printed form advising me of the necessary qualifications, including the height and weight requirements. Later that month, I drove to Ames to make a formal application for employment. At the Ames Police Department I was refused a formal application form on the grounds that I did not meet the 5'9" height requirement and the 160 lb. weight requirement.

16. In May, 1974, I filed charges with the Iowa Civil Rights Commission and with the EEOC alleging employment discrimination based upon sex against the Ames Police Department.

17. I also applied for but was denied employment as a police officer with the Newton Police Department. In recent years, I had taken and passed the civil service written test four times, most recently in September, 1974, but each time was denied employment solely because I did not meet the Department's height requirement of 5'9" and weight requirement of 150 lbs.

18. In November, 1974, I filed charges with the Iowa Civil Rights Commission and with the EEOC alleging employment discrimination based upon sex against the Newton Police Department.

19. On May 2, 1975, I filed with LEAA a charge of discrimination against the Des Moines Policy Department, the Ames Police Department and the Newton Police Department. I also charged discrimination against the Pella Police Department and the Urbandale Police Department both of which also denied me employment as a police officer. In my charge, I noted that the receipt of LEAA funding by the respective police departments was unlawful and urged LEAA to invoke its civil rights enforcement obligations immediately. [A copy of that charge is attached hereto as Exhibit A.]

20. I believe that the Des Moines Police Department has received nearly $700,000 in LEAA funding. I believe that the Des Moines Police Department currently is a recipient or subgrantee of approximately $200,000 in LEAA funding. LEAA has never suspended LEAA funding to the Des

Moines Police Department because of civil rights non-compliance.

21. I believe that the Ames Police Department currently is a recipient or subgrantee of approximately $17,000 in LEAA funding. I believe that the Newton Police Department currently is a recipient or subgrantee of approximately $40,000 in LEAA funding. LEAA has never suspended LEAA funding to either the Ames Police Department or the Newton Police Department because of civil rights non-compliance.

22. I believe that LEAA has never conducted a compliance review of nor even investigated the employment practices of any of the aforementioned Iowa police departments.

/s/_____
KRISTEN HEEMSTRA

Sworn to before me this
15th day of October, 1975.

/s/_____
DOROTHY B. SULLIVAN
Notary Public

HEEMSTRA EXHIBITS

Kristen Heemstra
200 Second Avenue, S.E.
Apartment 5
Altoona, Iowa 50009

May 1, 1975

Herbert C. Rice, Director
Office of Civil Rights Compliance
Law Enforcement Assistance Administration
United States Department of Justice
Washington, D.C. 20530

Re: LEAA Administrative Charge—
Sex Discrimination in Employment

Dear Mr. Rice:

I have been discriminated against on the basis of sex by several police departments. I am writing this letter to you in hopes that you will use your efforts to terminate this type of discrimination, or at least to suspend LEAA funding of the discriminatory employers—generally through your civil rights enforcement of the Safe Streets Act, and particularly through your enforcement of your Equal Rights Guidelines, G 7400.2 (March 14, 1973), reissued, G 7400.2A (June 18, 1974).

Kristen Heemstra: Complainant

In May, 1974, I received an AA degree from Des Moines Area Community College. *My major was Law Enforcement.* I had a cumulative grade point average of 3.98 (on a scale of 0. to 4.00).

Although I have frequently sought employment as a police officer, it has constantly been denied to me—because I am female and because I am 5′ 8-½″ in height and 130 lbs. in weight.

Des Moines Police Department—Respondent

The Des Moines Police Department has a minimum height requirement of 5′9″ and a minimum weight requirement of 150 lbs. It employs approximately 360 police officers, only one of whom is a woman.

In January, 1974, I attempted to apply for the position of police officer. After completing the pre-application form, I was sent to have my height measured. I was measured as 5'8-½", and was told that I therefore could not formally apply to be a police officer.

I have been advised by my attorney that the Des Moines Police Department is a current recipient of approximately $400,000 in LEAA funds.

Ames Police Department—Respondent

The Ames Police Department has a minimum height requirement of 5'9" and a minimum weight requirement of 160 lbs. It employs approximately 27 police officers, none of whom is a woman.

In April, 1974, I drove to Ames to make a formal application for employment. At the Police Department, I was refused an application form on the grounds that I did not meet the height and weight requirements.

I have been advised by my attorney that the Ames Police Department is a current recipient of approximately $17,000 in LEAA funds.

Pella Police Department—Respondent

The Pella Police Department has no height or weight requirements. It employs approximately 8 patrol officers, none of whom is a woman.

In April, 1974, I was permitted to apply for employment as a police officer. During the oral interview I was chided and laughed at for applying to be a police officer. I was not hired.

I do not know whether the Pella Police Department receives LEAA funds.

Urbandale Police Department—Respondent

The Urbandale Police Department has no height or weight requirements. It employs approximately 20 police officers, none of whom is a woman.

In April, 1974, I was permitted to apply for employment as a police officer. I passed the written test and was given an oral interview. I was not hired.

I do not know whether the Urbandale Police Department receives LEAA funds.

Newton Police Department—Respondent

The Newton Police Department has a minimum height requirement of 5'9" and a minimum weight requirement of 150 lbs. It employs approximately 25 police officers, none of whom is a woman.

I have applied for employment as a police officer, and passed the civil service test, on four separate occasions, most recently in September, 1974. In each instance I was refused employment because I am a woman and on the grounds that I did not meet the minimum height and weight requirements.

I have been advised by my attorney that the Newton Police Department is a current recipient of approximately $40,000 in LEAA funds.

Conclusion

I believe that the respondents' employment practices are unlawful and unconstitutional. I also believe that their receipt of LEAA funds is unlawful and unconstitutional. I urge you to invoke your civil rights enforcement obligations at the earliest possible date.

Sincerely,

Kristen Heemstra

UNITED STATES DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
WASHINGTON, D.C. 20531

January 8, 1976

Mr. E. Richard Larson
National Staff Councel
American Civil Liberties Union
22 East 40th Street
New York, New York 10015

RE: 75-C-115
Urbandale Police Department

RE: 75-C-116
Newton Police Department

RE: 75-C-117
Ames Police Department

RE: 75-C-118
Pella Police Department

RE: 75-C-119
Des Moines Police Department

Dear Mr. Larson:

As you may know, members of this Office's staff met with representatives of the Urbandale, Newton, Ames, and Des Moines Police Departments on December 2, 1975, to investigate and attempt to conciliate Ms. Kristen Heemstra's complaint of sex discrimination against each of those agencies. Because the Pella Police Department is not currently a recipient of LEAA funds, we lack jurisdiction to resolve her complaint against that department. We have asked the Iowa Crime Commission to notify us as soon as any future application for funds is received from the Pella Police Department, so that we may take appropriate action at that time.

In order to determine the appropriate remedy for each instance of alleged discrimination, we must have an indica-

tion from Ms. Heemstra as soon as possible, of her willingness to undergo the selection process, absent discriminatory devices, of each of the four police departments referred to above. This information is especially necessary to determine the appropriateness of back pay and retroactive seniority.

Please be advised that we are addressing the systemic employment practices of these departments that result in discrimination against women, such as minimum height requirements, as well as Ms. Heemstra's specific complaints of unlawful discrimination against those departments.

Should you or Ms. Heemstra have any comments or inquiries concerning this letter, please call me at (202) 376-3597.

Sincerely,

Herbert C. Rice, Director
Office of Civil Rights Compliance

BY:

Henry C. Tribble, Chief
Complaints Division
Office of Civil Rights Compliance

cc: Ms. Kristen Heemstra
200 Second Avenue S.E.
Altoona, Iowa 50009

Marvin Ruud, Regional Administrator
Kansas City, Kansas

Allen R. Way, Executive Director
Iowa Crime Commission
Des Moines, Iowa (SPA)

Kristen Heemstra
200 Second Avenue, S.E.
Altoona, Iowa 50009
February 6, 1976

Mr. Henry C. Tribble
Office of Civil Rights Compliance
United States Dept. of Justice
Law Enforcement Assistance Administration
Washington, D.C. 20531

Dear Mr. Tribble:

Thank you for your letter of January 8, 1976.

This letter is in response to your request for an indication of my "willingness to undergo the selection process" of four of the police departments which have discriminatorily denied me employment on the basis of their unvalidated minimum height and weight requirements.

At this point, my answer to your question is a conditional and tentative yes, I am willing.

At the outset, I should remind you that my educational background is in law enforcement, that I was repeatedly denied police officer employment because I am a woman, that I finally was able to secure police related employment with the Polk County Sheriffs' Department, and that I was promoted to police officer employment in October, 1975.

With this background in mind, I of course continue to be interested in law enforcement employment which is free of discrimination, which is challenging, and which offers both promotional opportunities and job security.

My tentativeness, however, stems from the pain and humiliation which I suffered by being denied employment with Urbandale, Newton, Ames, and Des Moines Police Departments. The wholesale injustice of being denied employment solely on the grounds of one's sex is an excruciating and debilitating experience. I thus have some question about returning to those Departments which so freely were allowed by you and others to discriminate against me.

My tentativeness also stems from the difficulty that a first employed female police officer initially experiences in

working on an otherwise all male force. It takes a great deal of time for the men to become used to the first female officer, to stop making solicitous or denigrating jokes, and to treat her as an equal. I've gone through this tiring process here at the Sheriffs' Department and am finally being accepted as an equal. I'm thus not too pleased with the prospect of running the gauntlet once again.

Finally, I'm most curious about whether I would be singled out for having challenged the respective Departments' sex discrimination. Nowhere in your letter do you indicate that any provisions would be made to protect me from retaliation. Your letter also fails to mention the possible availability of retroactive seniority. Indeed, your letter even fails to mention whether the Departments have in fact eliminated their discriminatory height and weight requirements.

I look forward to receiving further information from you. In the meantime, I remain tentatively willing to undergo the selection process at one or more of the Departments.

Sincerely,

Kristen Heemstra

AMERICAN CIVIL LIBERTIES UNION
22 East 40th Street
New York, New York 10016
(212) 725-1222

March 5, 1976

Mr. Henry C. Tribble
Office of Civil Rights Compliance
United States Dept. of Justice
Law Enforcement Assistance Administration
Washington, D.C. 20531

Re; Des Moines Police Department

Dear Mr. Tribble:

By letter dated January 8, 1976, you informed me that you were engaged in conciliation with the Des Moines Police Department concerning its sex discriminatory minimum height and weight requirements.

This week I received a copy of the enclosed Exam Announcement for Police Officers. The Announcement indicates that the release date was January 20, 1976; that the application deadline was February 27, 1976; and that the written exam is scheduled for March 9, 1976. I have been informed that the above dates have not been extended and that the listed qualifications have not been changed.

As you'll note, included among the required qualifications is the following: "Height—Between 5 foot 9 inches and 6 feet 4 inches with appropriate weight."

Given the above and the enclosed, I am most curious about the status of your "conciliation" with the Des Moines Police Department. I would appreciate a reply to this matter at your earliest convenience.

Sincerely,

Richard Larson
National Staff Counsel

ERL/lr

CITY OF DES MOINES
CIVIL SERVICE COMMISSION
Des Moines, Iowa 50307

EXAM ANNOUNCEMENT
For
POLICE OFFICER
(Entrance)

DUTIES:

Under direction, to patrol an assigned beat in the enforcement of law and order; to carry out special assignments in the protection of life and property; and to perform related work as required.

SALARY:

Starting salary $10,680 per year; consideration for annual increases to a maximum of $12,257 per year.

QUALIFICATIONS:

1. High School Diploma or GED
2. Between ages of 21 and 32 but not have reached 32nd birthday by date of application.
3. Vision—if glasses are worn 20/20 or better in both eyes. 20/100 in each if correctable to 20/20.
4. Height—Between 5 foot 9 inches and 6 feet 4 inches with appropriate weight.
5. Possession of a valid motor vehicle operator's license issued by the State of Iowa.

METHOD OF EXAM:

Written Examination: 6:30 p.m., March 9, 1976 (and March 10 if more than 100 candidates apply). To be held at the Regional Police Academy, 433 Army Post Road, Des Moines, Iowa.

Physical Agility: 7:00 p.m., March 11, 1976. To be held at the Drake University Fieldhouse, 27th and Forest, Des Moines, Iowa (use the northeast door on 27th).

Physical Examination: Successful candidates of the patrolman exams will be notified by the Police and Fire Retirement Board, and told when and where to appear. The examination cost will be paid by the Retirement Board.

Oral Interview: To be held before the Civil Service Commission—date to be announced.

PURPOSE OF EXAM:

To fill existing vacancies, and to establish an eligible list.

HOW TO APPLY:

Apply at the Police Personnel Unit, First Floor, Municipal Court Building, East First and Court Avenue—8:00 a.m. to 5:00 p.m., Monday through Friday.

APPLICATION DEADLINE:

5:00 p.m., February 27, 1976.

CITY OF DES MOINES
CIVIL SERVICE COMMISSION



City Hall/East 1st and Locust Streets
Des Moines, Iowa 50307

439

CITY OF DES MOINES

The City of Des Moines employs approximately 1,900 persons with 1,331 under the Civil Service system. The many different departments provide a variety of community services including police and fire protection, health, building inspection, park and recreation facilities, street construction and maintenance, sanitation, engineering, planning, and zoning functions.

As a City employee you may work in City Hall, the Armory Building, the Municipal Court Building, or in various other offices and shops located throughout the City to better serve the public.

JOB SECURITY

All permanent Civil Service employees are afforded the protection of rules which allow demotion, suspension, or discharge only for cause, and insure the right of a hearing on all such charges.

ADVANCEMENT OPPORTUNITIES

The salary range stated on the front of this announcement indicates the minimum and maximum salary for the announced position. Annual increases are granted for satisfactory service on the anniversary date of your employment. In addition, most positions provide an increase after completion of a six month probationary period.

Many promotional opportunities exist in the City service, which are based on ability, as measured by competitive examinations. The system provides over one hundred promotional classifications which are only open to City employees, and the exception is for employees who meet the minimum qualifications to compete in entrance examinations for higher level positions.

VACATIONS, HOLIDAYS AND SICK LEAVE

All permanent City employees earn two weeks of paid vacation each year. After seven years of continuous employment the annual vacation is three weeks, after fifteen years it is increased to four weeks a year, and upon completion of twenty-five years of service an employee receives five weeks annually.

The City observes nine paid holidays a year, and all permanent employees accrue twelve days sick leave per year with unused portions cumulative. Sick leave accumulations over twelve days are payable at the rate of 50% at the time of retirement or death.

Permanent employees who become incapacitated as a result of injury or occupational disease incurred through no misconduct of their own while in actual performance of duty can receive up to six months full pay. If disabled for longer than six months, reduced benefits are provided.

INSURANCE

Employees are provided group hospital and medical insurance with major medical benefits to a maximum of $250,000. The cost of this program, including dependent coverage, is borne by the City. Employee group life insurance is also provided at no cost.

EXCELLENT RETIREMENT PLAN

Permanent city employees, with the exception of policemen and firemen, contribute 3 1/2% of their first $10,800 of annual earnings to a State administrated retirement fund and the City matches their contributions. If the employee leaves City employment prior to retirement, his contribution is refunded with interest and interest dividends.

A normal retirement benefit is provided at age sixty five (65) after eight (8) years of service. An employee may retire at age fifty five (55) and receive reduced benefits.

Policemen and firemen contribute a percentage of their salary to their own retirement systems. This percentage is determined by their age at the time of employment. The minimum rate of contribution is 4.21%. The contribution is refunded plus interest, upon termination for reasons other than death or retirement.

Policemen and firemen are also provided with death and disability benefits. Their retirement is required upon attaining the age of sixty five (65) years, with provisions for one year extensions.

HOW WE HIRE

Applications can be obtained at room 106 City Hall, East First at Locust Street, or by calling AC 515 283 4213. Completed applications must be returned by mail or in person by the closing date stated on the front of this announcement.

A competitive examination may be given which usually includes several parts. The type of selection process to be used is stated on this announcement. In addition, a satisfactory physical examination may be required before appointment to a position. Any serious medical condition may be cause for disqualification.

After successful completion of all parts of the selection process, candidates with the highest ranking are placed on an eligible list in order of their rank. Eligible lists are limited to a maximum of the ten highest candidates. Qualified veterans who have been placed on an eligible list may claim selection preference under Iowa law by presenting their discharge papers. Vacancies are filled from the eligible list until depleted or until the next examining cycle which begins in April of each year.

It is the policy of the City of Des Moines to seek the best qualified applicants for every job and to provide equal opportunity for all persons to compete for employment with the City.

WHAT WE REQUIRE

Residence: City residence is not required at the time of application or after employment. However, sworn officers in the Police Department and uniformed personnel in the Fire Department must live within twenty miles of the corporate limits of the City of Des Moines.

Age: There are no age requirements unless otherwise stated in this announcement.

Citizenship: Applicants must be citizens of the United States. Foreign born applicants must present proof of citizenship before they can be appointed to a position.

The Civil Service Commission reserves the right to refuse to examine an applicant, to remove his name from an eligible list, or refuse to certify an eligible, who for good and sufficient reason is deemed undesirable for public employment. In addition, the Commission acknowledges its responsibility to refuse employment to persons who do not meet the employment qualifications specified by the Code of Iowa.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

---

75 Civ. 1444
Judge Corcoran

NATIONAL BLACK POLICE ASSOCIATION, ET AL.,
PLAINTIFFS,

v.

RICHARD W. VELDE, ET AL., DEFENDANTS

AFFIDAVIT

State of California)
) ss.
County of Alameda)

KENT G. McKINNEY, being duly sworn, deposes and says:

1. I am a named plaintiff in the above-entitled case.

2. I am a black citizen of the United States and a resident of Oakland, California.

3. I am a former Oakland police officer and was discriminatorily forced to resign by the Oakland Police Department.

4. The Oakland Police Department currently employs approximately 708 sworn police officers, of whom 91 (or 12.8%) are black. (Only one police officer is a woman.) According to the 1970 census, the population of the City of Oakland was 34.7% black. I believe that the current population of the City of Oakland is approximately 45% black.

5. All but six of the black officers hold the entry-level rank of police officer. Of approximately 125 sergeants, only five (or approximately 4.0%) are black. Of the 32 lieutenants only one (or 3.1%) is black. Of the 12 captains, none is black. One of the deputy chiefs is black.

6. Applicants for entry-level employment as a police officer are required to pass a written test, among other requirements. I believe that the written test has had a racially discriminatory impact against black applicants. The written test has never been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the job of police officer.

7. Upon hiring, police officers are required to attend a training program and are employed for one year in a probationary status. A disproportionate number of black officers have been discharged during training and during probation for reasons unrelated to successful job performance. For example, in my training class, there initially were 22 recruits, 9 of whom were black; at the conclusion of the training program, only 11 recruits had not been screened out, of whom only one (me) was black.

8. Police officers who seek promotion to the rank of sergeant must have three years of experience (weighted 10%), must pass a written test (weighted 60%) and must pass a subjectively administered oral interview (weighted 30%). The most recent examination was administered in May, 1975. Of the approximately 225 whites who took the test, 44 (or approximately 19%) passed; of the 36 blacks who took the test, only three (or 8%) passed. None of the above requirements has been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the job of sergeant.

9. Police officers who seek promotion to the rank of lieutenant must be employed for 2 years as sergeant, and must pass a written test and oral interview. Each of these requirements has had a discriminatory effect upon blacks. None of these requirements has been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the job of lieutenant.

10. I began my employment as a Oakland police officer in August, 1973. At that time, I was one of the few Oakland police officers who was a college graduate. I was also one of the few Oakland police officers (probably the only one) to hold a black belt in "Tae Kwon Do," a Korean style

marshall art, and to teach the art of self defense and personal safety at a local training gym.

11. In June, 1974, I was forced to resign during my probationary period because of an alleged casual demeanor and lack of safety consciousness.

12. In August, 1974, the Oakland Black Officers Association (through its President Raymond Clark) and I filed charges of discrimination against the Oakland Police Department with LEAA. In those charges, we complained of my discriminatory discharge and enumerated other discriminatory employment practices of the Oakland Police Department. (A copy of those charges is attached hereto as Exhibit A.)

13. Our charge was not the first complaint filed with LEAA against the Oakland Police Department. In April, 1973, an eighteen-page administrative complaint was filed with LEAA against Oakland and eighteen other California cities. That complaint, which was filed by a coalition of seven civil rights organizations, detailed the aforementioned discriminatory employment practices of the Oakland Police Department, noted that Oakland had received $738,672 in LEAA funding in 1971 and 1972, and sought the "termination or suspension" of LEAA funding. (A copy of the complaint is attached hereto as Exhibit B.)

14. To the best of my knowledge, LEAA, in response to the coalition's LEAA complaint, requested information from the Oakland Police Department about its employment practices, but declined to conduct an on-site field investigation into those practices. To the best of my knowledge, in response to my complaint, LEAA, in the fall of 1974, did conduct an on-site field investigation into the employment practices of the Oakland Police Department. However, I have not heard from LEAA since that time, well over a year ago.

15. I believe that LEAA monies have continued to flow into the Oakland Police Department unabated. In the past

five years, I believe that the Oakland Police Department has received approximately $1,000,000 in LEAA funding.

/s/ _____
KENT G. MCKINNEY

Sworn to before me this
day of October, 1975

/s/_____
Notary Public

McKINNEY EXHIBIT

CLIFFORD SWEET
JULIA BLACKWELL
MALCOLM HUNTER
LEGAL AID SOCIETY OF ALAMEDA COUNTY
1815 Telegraph Avenue
Oakland, California 94612
Telephone: 451-6920
Attorney for Complainants

UNITED STATES DEPARTMENT OF JUSTICE

IN RE RACE DISCRIMINATION IN EMPLOYMENT IN CONTRAVENTION OF THE 14TH AMENDMENT, U.S. CONSTITUTION AND TITLE 28 C.F.R. SS 42.201 *et seq.*, as amended August 18, 1972

KENT G. McKINNEY, individually and on behalf of all others similarly situated and the OAKLAND BLACK OFFICERS ASSOCIATION, COMPLAINANTS.

ADMINISTRATIVE COMPLAINT

I

This is an administrative complaint brought by KENT G. McKINNEY, individually and on behalf of all others similarly situated, and by the OAKLAND BLACK OFFICERS ASSOCIATION, as representatives of racial and ethnic employees with the Oakland Police Department in the position of Police Officer.

The purpose of the complaint is to mandate the Attorney General, the Department of justice and the Administrator of the Law Enforcement Assistance Administration (hereinafter LEAA) to enforce the non-discriminatory requirements of the 14th Amendment, U.S. Constitution and Title C.F.R. SS42.201 *et seq.*, as they apply to the employment practices and training policies of the Oakland Police Department.

II

The 14th Amendment, U.S. Constitution requires that the several States not deny the equal protection of the laws to any person within their jurisdiction. Department of Justice regulations, 28 C.F.R. SS42.201 *et seq.*, were promulgated to enforce that Amendment by eliminating discrimination on the grounds of race in the employment practices of State agencies or offices receiving financial assistance extended by the Department of Justice under Title I of the Omnibus Crime Control and Safe Streets Act of 1968, (hereinafter the Safe Streets Act.) The Attorney General and his delegate, the Administrator of LEAA, have the principal responsibility for the enforcement of the provisions of the above cited regulations.

III

At the time of the filing of this Complaint and at all times mentioned herein, the Oakland Police Department, California was in receipt of, or will receive Federal financial assistance from the Department of Justice under Title I of the Safe Streets Act.

IV

Complainaint, KENT G. MCKINNEY, is a Black male with a B.A. degree in Sociology from the University of California, Hayward, California. Complainant holds a Black Belt in "Tae Kwon Do", a Korean style marshall art. Complainant served on the Oakland Police Department for ten (10) months prior to his forced resignation on June 3,

Complainant, OAKLAND BLACK OFFICERS ASSOCIATION, is a police organization within the Oakland Police Department and has as one of its purposes, to secure equal employment rights for all racial minorities and females in all segments of the Oakland Police Department.

V

Complainants bring this Complaint on behalf of themselves and (a) all racial minorities who would be eligible for, and interested in, positions as Police Officers with the Oakland Police Department, but are denied the job oppor-

tunity because of the recruit training program that is adminsitered by the City of Oakland.

As a former Black male recruit with the Oakland Police Department, complainant KENT G. McKINNEY is within the class of persons beneficially interested in the faithful performance of the legal duty of the Oakland Police Department, the City of Oakland, and Oakland Police adviser, JAMES M. NEE, under the Oakland Police Department's Affirmative Acton Program and the laws and regulations set forth hereinabove, and in the outcome of this Administrative Complaint.

VI

The City of Oakland Civil Service Board of Commissioners, pursuant to Oakland City Charter Article XIII, Sections 70–84, is responsible for the administration of the City of Oakland Civil Services system. Included within the duties of the Oakland Civil Service Commission, is the setting of the standards and procedures for the selection of persons for positions as officers with the Oakland Police Department, and the development of an effective affirmative action program under LEAA regulations to properly train, upgrade and promote racial minority and female persons within the Oakland Police Department.

VII

KENT G. McKINNEY was employed as a Police Officer with the City of Oakland, California until June 3, 1974.

On June 3, 1974, KENT G. McKINNEY was advised that he had a choice of resigning or being fired from the Oakland Police Department because of his alleged lack of safety consciousness and casual demeanor, even thought he holds a Black Belt in "Tae Kwon Do" a Korean style marshall art, and is instructor in a training gym where he teaches the art of self-defense and safety.

On June 14, 1974, the Oakland Police Officers met with Oakland Chief of Police, GEORGE HART, and requested that he review KENT McKINNEY's termination and reverse that decision.

On June 26, 1974, KENT McKINNEY was informed by Oakland Police Chief, GEORGE HART that KENT McKINNEY would not be rehired.

On July 2, 1974, KENT G. McKINNEY was further advised by a letter from the City Manager, addressed to the N.A.A.C.P. (Oakland, California chapter) that KENT G. McKINNEY's performance in recruit school was unsatisfactory. The correspondence to the N.A.A.C.P. is attached as Exhibit "A".

VIII

KENT G. McKINNEY and the OAKLAND BLACK OFFICERS ASSOCIATION, add that:

1. KENT G. McKINNEY worked with and around competent Black Police Officers who allege that he had no problems that could not be corrected with additional police experience.

2. KENT G. McKINNEY was arbitrarily denied the request that he be allowed to ride with an Oakland Black Police Officer with six years' experience who indicated KENT McKINNEY could become an asset to the Oakland Police Department.

3. The field training officer who supervised KENT McKINNEY was biased, had limited training skills and KENT McKINNEY was his first trainee.

4. The Oakland Police Department has no valid criteria for selecting field training officers, nor are they given proper training prior to their assignment as field training officers.

5. The Oakland Police Department's training program has a discriminatory effect upon racial minorities because from August 6, 1973 through January 4, 1974, the Oakland Police recruitment records show that 31.3% of racial minorities failed the training program as compared to 10.7% of the Caucasian recruits, and racial minorities represented 39.8% of the recruits but 65.9% of the failures during this period.

6. That success in the Oakland Police Department's Recruit School is largely dependent upon the teaching skills of

the training officers and is not wholly reflective of the abilities of minority recruits.

7. KENT G. McKINNEY's termination is in violation of the Oakland Police Department's Affirmative Action Plan, as required by LEAA regulations in that KENT McKINNEY was not given the proper supervision and training under that plan.

8. The Affirmative Action Plan of the Oakland Police Department is in violation of Federal law and LEAA regulations in that the plan:

a) Omits utilization analyses and fails to identify specific problem areas, such as recruit training;

b) Does not establish target dates for initiation and completion of corrective actions;

c) Does not have a provision for annual review;

d) Has no realistic goals for employment of women and racial minorities;

e) Has not instituted any affirmative action related training in the Police Department.

9. As the result of the circumstances described in this complaint and other reasons, KENT G. McKINNEY, the OAKLAND BLACK OFFICERS ASSOCIATION and the class they represent have been systematically and effectively denied the opportunity to be employed with the Oakland Police Department.

IX

KENT G. McKINNEY alleges that the Police Recruit Training Program of the City of Oakland has not been validated by any independent validation study as required by LEAA regulations under Title 28 Section 42.303, 42.304(D) and 42.304(c)(1).

X

At all times herein mentioned, the City of Oakland performs the duties, as set forth above but, notwithstanding such ability and despite KENT G. McKINNEY demand, the City of Oakland has failed and refused, and continues to fail and refuse to perform their duties to hire him for em-

ployment as a Police Officer and to validate their police recruit training program. Unless compelled by this agency to do these acts required by 28 C.F.R. SS201 *et seq.*, respondents will continue to fail and refuse to do so.

WHEREFORE, complainants request the following relief:

1. That a prompt investigation of this complaint be made, pursuant to 28 C.F.R. §42.107(c);

2. That judicial proceedings be instituted pursuant to 28 C.F.R. §42.206 (a) to achieve compliance with 28 C.F.R. §§42.201 *et seq.*, or, in the alternative;

3. That the necessary administrative proceedings be instituted to suspend, terminate, refuse to grant or continue Federal financial assistance where a failure or threatened failure of compliance with the above cited regulations appear;

4. That Respondents file assurances, pursuant to 28 C.F.R. 42.204 that the requirements of the above cited regulations will be complied with;

5. That the Attorney General require and Respondents furnish compliance reports pursuant to 28 C.F.R. §§42.205 and 106(b) that such requirements are actually being complied with, and

6. For such other and further relief as is deemed necessary to guarantee complainants the benefits and protections guaranteed by the 14th Amendment, U.S. Constitution and 28 C.F.R. SS42.201 *et seq.*

Dated: August 8, 1974.

/s/_____

CLIFFORD SWEET
Attorney for Complainants

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

---

75 Civ. 1444
Judge Corcoran

NATIONAL BLACK POLICE ASSOCIATION, ET AL.,
PLAINTIFFS,

v.

RICHARD W. VELDE, ET AL., DEFENDANTS.

AFFIDAVIT

State of Oregon)
) ss;
County of Washington)

PENNY ORAZETTI, being duly sworn, deposes and says:

1. I am a named plaintiff in the above-entitled case.

2. I am a female citizen of the United States and a resident of Beaverton, Oregon.

3. I am a member and former officer of the International Association of Women Police.

4. I have been discriminated against by the Portland [Oregon] Police Bureau.

5. The Portland Police Bureau employs approximately 730 sworn police officers, of whom only 27 (or approximately 3.0%) are women.

6. Until 1973, the Portland Police Bureau maintained separate job classifications for female officers and male officers: female officers were classified as "policewomen" and male officers as "policemen." Until 1973, there were only 18 authorized entry-level and promotional positions for police-

women, and approximately 700 entry-level and promotional positions for policemen.

7. Until 1973, policewomen were paid less than policemen (deemed to be "specialists") performing the same work. Most policewomen were permanently assigned to the Women's Protective Division although they frequently received temporary assignments to work alongside policemen on narcotics cases, in the Juvenile Division, and in undercover investigative work.

8. I became a policewoman with the Portland Police Bureau in 1964. At that time women were required to have a college degree although men needed only a high school diploma or G.E.D.

9. Shortly after I learned that policemen (deemed "specialists") were being paid higher salaries than policewomen performing the same work, I complained to the Bureau's Personnel Division. I was told not to rock the boat and was threatened with termination.

10. In June, 1968, I applied to take the promotion examination for detective. In July, 1968, my application was denied on the grounds that the promotion examination was open only to policemen and I was a policewoman. Shortly thereafter, I was assigned to secretarial duties as punishment.

11. During the next four years, I was denied other promotions, was denied access to transfers, was denied official or vacation leave for an IAWP convention, and was in other ways discriminatorily harassed.

12. My sister Roberta Ledyard became a policewoman with the Portland Police Bureau in July, 1971. In the fall of 1971, she attended the Police Academy with 42 policemen, graduating number one in her class. Although the policemen thereafter received assignments throughout the police department, she, over her objection, was assigned to the Women's Protective Division.

13. Like me, my sister, during the next few years, sometimes worked on special assignments alongside policemen, but she was denied equal pay, was denied transfers and was in other ways discriminatorily harassed.

14. In December 1972, my sister and I, and nine other policewomen filed union grievances alleging sexually discriminatory denial of equal pay and transfer rights. In January 1973, my sister and I, various other policewomen, and several rejected applicants, filed sex discrimination charges against the Portland Police Bureau with the Oregon Civil Rights Division and with the EEOC. The various charges challenged the Bureau's discriminatory recruitment, hiring, assignments, and transfers, among other sexually discriminatory practices.

15. During the spring and summer of 1973, the Portland Police Bureau eliminated its sex segregated classifications of policewoman and policeman; it opened previously male positions to female applicants; and it agreed to provide equal pay to female police officers. It, however, denied retroactive back pay prior to January 1, 1973, to the female police officers; it subsequently lowered the pay of all police officers to that previously paid to policewomen; it refused to direct recruitment to attract female officers; it required applicants to pass discriminatory and non-job-related physical agility tests; it refused to provide additional training to female officers; and it continued to penalize female officers for lack of patrol experience (denied to women before 1973) in promotional examinations. And in August, 1973, although the Bureau appointed me as Project Director of an LEEA funded project, it paid me a lower salary than the previous Project Director, a male officer. These practices among others have been the subjects of additional sex discrimination charges filed with the Oregon Civil Rights Division and the EEOC.

16. The sexually discriminatory history and current practices of the Portland Police Bureau are well known to LEAA. In December 1972, a four-person investigative team from LEAA conducted a civil rights compliance review of the Portland Police Bureau's employment practices. During that compliance review, my sister and I spoke with the investigators, discussed the filing of administrative charges with LEAA, and were told by the investigators that such was unnecessary because of the compliance review and because LEAA "would never deny LEAA funds

to an agency because of discrimination . . . and everyone including Portland's Mayor and the Chief knew that."

17. In a letter dated January 31, 1973, Herbert C. Rice advised the Portland Civil Service Board that the Portland Police Bureau was not in compliance with the LEAA nondiscrimination regulations, and that four "immediate steps" were "require[d]"; (1) that the position of policewoman be abolished; (2) that female officers be given equal opportunity for promotion; (3) that previously denied training be given to female officers to allow them "to fairly compete in promotional examinations"; and (4) that a "new recruiting effort" be undertaken to attract female applicants. [A copy of that determination letter is attached hereto as Exhibit A.]

18. In March, 1973, and again in the summer of 1974, several members of LEAA's compliance review team unsuccessfully sought to obtain civil rights compliance from Portland officials and, I believe, from the chief executive of the State of Oregon. Of the four requirements set forth in Mr. Rice's determination letter, only the first was ultimately complied with (on June 22, 1973, the position of policewoman was abolished). The other requirements have not yet been complied with, and other discriminatory practices, set forth above, have also continued.

19. I believe that the Portland Police Bureau has received more than $5,000,000 in LEAA funding. LEAA has never suspended LEAA funding to the Portland Police Bureau for civil rights non-compliance.

/s/_____
PENNY ORAZETTI

Sworn to before me this
6th day of November, 1975.

/s/_____
Notary Public

ORAZETTI EXHIBIT

January 31, 1973

Chief Donald I. McNamara
Bureau of Police
222 S.W. Pine Street
Portland, Oregon 97204

Dear Chief McNamara:

As you know, the civil rights compliance review team from this office has completed their on-site survey of your bureau. We greatly appreciate the cordial reception and generous time permitted the team not only by the personnel of the Bureau of Police and the Civil Service Board, but other State and City officials as well as the citizens of Portland.

As explained in our initial meeting, we would be responding by letter outlining the major areas of concern. We understand that you are giving consideration to some of these issues, and that some of these suggested changes may be implemented in the very near future. Specifically, our recommendations fall into four categories: minority recruiting, qualifications, sex discrimination and complaints.

We are fully aware of your efforts in the past to recruit minorities, however, the facts remain that the minority representation among the sworn officers is only 9.7% of the total force, in a city with a 6% minority population.

Therefore, we recommend that an immediate commitment be made to planning and assigning personnel to an affirmative recruiting program designed to attract racial minorities to the Bureau of Police.

Closely related to the area of recruiting is that of minimum qualifications for employment. Because the minority applicant flow has not been large enough to determine if there is a differential impact in your recruiting and qualifying devices, we recommend that:

1. As minorities are recruited, evidence be collected to determine if the examination process has a disparate impact on minorities.
2. It be clearly publicized that the educational entrance requirement is a high school diploma or equivalent,

and that an equal opportunity be given to all members of the police force to fulfill subsequent and conditional educational requirements.

It is our understanding that there are only 18 sworn female officers among the 738 officers of the Bureau of Police. We must require that immediate steps be taken to upgrade the status of women in the department to assure compliance with the external Equal Employment Opportunity Regulations of the Law Enforcement Assistance Administration (28 C.F.R., 42.201, et. seq. subpart D), by:

1. The position of policewoman should be abolished, and females as well as males, should be processed for all positions within the police force except those where sex can be shown to be a bona fide occupational qualification.

2. Present employees in the position of policewoman should be given an equitable opportunity for promotions in the department.

3. The requisite training necessary to fairly compete in promotional examinations be provided for the female officers who were denied this standard training in the Police Academy.

4. As part of a new recruiting effort, it be clearly publicized that the applications of women will be accepted on a non-discriminatory basis.

Finally, the review team ascertained that adequate records were not kept relative to the resolution of complaints both internal and from citizens. We recommend that an adequate system be adopted.

Members of our team will be available for consultation in Portland during the first part of March, 1973. In any case, we expect an initial report of the preliminary steps taken in

accordance with the recommendations in this letter by April 1, 1973.

Sincerely,

HERBERT C. RICE, Director
Office of Civil Rights Compliance

cc: Mayor Neil H. Goldschmidt

Mr. George R. McDonald, Director
Portland Civil Service Board

Mr. Peter Meany, SPA

Mr. David Head, Reg. Admin.
LEAA—Seattle REgional Office

Mr. Mike Dallich

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

---

75 Civ. 1444
Judge Corcoran

NATIONAL BLACK POLICE ASSOCIATION, ET AL.,
PLAINTIFFS,

v.

RICHARD W. VELDE, ET AL., DEFENDANTS.

AFFIDAVIT

State of Oregon)
) ss.
County of Multnomah)

ROBERTA LEDYARD, being duly sworn, deposes and says:

1. I am a named plaintiff in the above-entitled case.

2. I am a female citizen of the United States and a resident of Portland, Oregon.

3. I am a member of the International Association of Women Police.

4. I have been discriminated against by the Portland [Oregon] Police Bureau.

5. The Portland Police Bureau employs approximately 730 sworn police officers, of whom only 27 (or approximately 3.0%) are women.

6. Until 1973, the Portland Police Bureau maintained separate job classifications for female officers and male officers: female officers were classified as "policewomen" and male officers as "policemen." Until 1973, there were only 18 authorized entry-level and promotional positions for policewomen, and approximately 700 entry-level and promotional positions for policemen.

7. Until 1973, policewomen were paid less than policemen (deemed to be "specialists") performing the same work. Most policewomen were permanently assigned to the Women's Protective Division although they frequently received temporary assignments to work alongside policemen on narcotics cases, in the Juvenile Division, and in undercover investigative work.

8. My sister, Penny Orazetti, became a policewoman with the Portland Police Bureau in 1964.

9. I became a policewoman with the Portland Police Bureau in July, 1971. In the fall of 1971, I attended the Police Academy with 42 policemen, graduating number one in my class. Although the policemen thereafter received assignments throughout the police department, I, over my objection, was assigned to the women's Protective Division.

10. During the next few years, I sometimes worked on special assignments alongside policemen, but was denied equal pay, was denied transfers and was in other ways discriminatorily harassed.

11. In December 1972, my sister and I, and nine other policewomen filed union grievances alleging sexually discriminatory denial of equal pay and transfer rights. In January 1973, my sister and I, various other policewomen, and several rejected applicants, filed sex discrimination charges against the Portland Police Bureau with the Oregon Civil Rights Division and with the EEOC. The various charges challenged the Bureau's discriminatory recruitment, hiring, assignments, and transfers, among other sexually discriminatory practices.

12. During the spring and summer of 1973, the Portland Police Bureau eliminated its sex segregated classifications of policewoman and policeman; it opened previously male positions to female applicants; and it agreed to provide equal pay to female police officers. It, however, denied retroactive back pay prior to January 1, 1973, to the female police officers, it subsequently lowered the pay of all police officers to that previously paid to policewomen; it refused to direct recruitment to attract female officers; it required applicants to pass discriminatory and non-job-related phys-

ical agility tests; it refused to provide additional training to female officers; and it continued to penalize female officers for lack of patrol experience (denied to women before 1973) in promotional examinations. And in August, 1973, although the Bureau appointed my sister as Project Director of an LEAA funded project, it paid her a lower salary than the previous Project Director, a male officer. These practices among others have been the subjects of additional sex discrimination charges filed with the Oregon Civil Rights Division and the EEOC.

13. The sexually discriminatory history and current practices of the Portland Police Bureau are well known to LEAA. In December 1972, a four-person investigative team from LEAA conducted a civil rights compliance review of the Portland Police Bureau's employment practices. During that compliance review, my sister and I spoke with the investigators, discussed the filing of administrative charges with LEAA, and were told by the investigators that such was unnecessary because of the compliance review and because LEAA "would never deny LEAA funds to an agency because of discrimination . . . and everyone including Portland's Mayor and the Chief knew that."

14. In a letter dated January 31, 1973, Herbert C. Rice advised the Portland Civil Service Board that the Portland Police Bureau was not in compliance with the LEAA nondiscrimination regulations, and that four "immediate steps" were "require[d]": (1) that the position of policewoman be abolished: (2) that female officers be given equal opportunity for promotion; (3) that previously denied training be given to female officers to allow them "to fairly compete in promotional examinations"; and (4) that a "new recruiting effort" be undertaken to attract female applicants. [A copy of that letter is attached hereto as Exhibit A.]

15. In March, 1973, and again in the summer of 1974, several members of LEAA's compliance review team unsuccessfully sought to obtain civil rights compliance from Portland officials and, I believe, from the chief executive of the State of Oregon. Of the four requirements set forth in Mr. Rice's determination letter, only the first was ultimate-

ly complied with (on June 22, 1973, the position of policewoman was abolished). The other requirements have not yet been complied with, and other discriminatory practices, set forth above, have also continued.

16. I believe that the Portland Police Bureau has received more than $5,000,000 in LEAA funding. LEAA has never suspended LEAA funding to the Portland Police Bureau for civil rights non-compliance.

/s/_____
ROBERTA LEDYARD

Sworn to before me this
5th day of November, 1975.

/s/_____
Notary Public

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

---

75 Civ. 1444

Judge Corcoran

NATIONAL BLACK POLICE ASSOCIATION, ET AL., PLAINTIFFS,

v.

RICHARD W. VELDE, ET AL., DEFENDANTS.

AFFIDAVIT

State of Michigan)
) ss.
County of Wayne)

ROBERT BOOTH, being duly sworn, deposes and says:

1. I am a named plaintiff in the above-entitled case.

2. I am a black citizen of the United States and a resident of Detroit, Michigan.

3. I am Vice President of the Guardians of Michigan (a member organization of the National Black Police Association).

4. I have been discriminated against by the Wayne County Sheriff's Department.

5. The Wayne County Sheriff's Department employs approximately 525 duly appointed deputy sheriffs, of whom 149 (or 28%) are black persons. According to the 1970 census, the population of Wayne County was 27% black. I believe that the current population of Wayne County is 30% black.

6. Above the entry-level rank of patrolman, however, there are very few ranks filled by black deputy sheriffs. Of 29 detectives, there are only 3 (or 10.3%) black detectives; of 40 sergeants, there are only 7 (or 17.5%) black sergeants;

there are only 5 black lieutenants; and of 7 deputy inspectors, there are no black deputy inspectors.

7. Until as recently as 1965, most black deputy sheriffs received patrol assignments and other duties on a racial basis. Moreover, most all provisional appointments to promotional ranks were given to white deputy sheriffs, almost totally excluding blacks from the promotional ranks.

8. Deputy sheriffs who seek promotion to the rank of detective or of sergeant must have 4 years experience as a deputy sheriff and must rank high on an examination consisting of a written test, a subjective oral interview, and a subjective evaluation. The most recent examinations, administered in August, 1974 and in November, 1974, discriminated so heavily against blacks so as to totally preclude their eligibility for appointment to the ranks of detective or sergeant. None of these promotional requirements has been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the jobs of detective or sergeant.

9. Deputy sheriffs who seek promotion to the rank of deputy inspector must have attained permanent status as a lieutenant, and must pass an examination consisting solely of subjective oral interview. In the most recent examination, administered in December, 1978, all black applicants were eliminated. None of the above requirements has been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the job of deputy inspector.

10. I am a fifteen-year veteran of the Wayne County Sheriff's Department currently holding the entry-level position of patrolman. I have repeatedly applied for but been denied promotion to the ranks of detective and sergeant. In September, 1974, July, 1973, and March, 1969, I was denied promotion to detective on the grounds that I had failed to rank high enough on the promotion criteria. In February, 1975, October, 1973, November, 1970, and April, 1967, I was denied promotion to sergeant on the grounds that I had failed to rank high enough on the promotion criteria.

11. On October 4, 1974, another black deputy sheriff, the Guardians of Michigan; and I filed an action on the Circuit Court of Wayne County alleging unlawful racial discrimination in violation of §17.458(3)(a) of Mich. Stat. Ann., and of Article I, §2 of the Michigan Constitution, against various officials of Wayne County, *Hawkins* v. *Lucas*, 74–032928 (Cit. Ct. of Wayne Cty., Mich., filed Oct. 4, 1974).

12. On November 18, 1974, other black deputy sheriffs, the Guardians of Michigan, and I filed a class action complaint in the United States District Court for the Eastern District of Michigan alleging unlawful racial discrimination in violation of 42 U.S.C. §1981, §1983, §1985, §1988 against, among others, various officials of Wayne County, *Reed* v. *Lucas*, 74–72798 (E.D. Mich. filed Nov. 18, 1974).

13. In April, 1975, a colleague of mine, Bobby Hawkins, a named plaintiff in both *Hawkins* and *Reed*, filed with LEAA a charge of discrimination detailing the unlawful employment discrimination in the Wayne County Sheriff's Department. I believe that LEAA declined to conduct an investigation into the charge filed against the Wayne County Sheriff's Department. (A copy of the charge is attached hereto as Exhibit A.)

14. On July 16, 1975, the United States District Court granted our motion for a preliminary injunction in *Reed* v. *Lucas*, *supra*, stating that we were likely to succeed on the merits, and ordering that "one of every two persons promoted to detective and to deputy inspector must be a member of the black race." (A copy of the Court's Memorandum Opinion and Order is attached hereto as Exhibit B.)

15. Discovery is continuing in *Reed* v. *Lucas*, *supra*, and I do not anticipate trial on the merits before the winter of 1975–1976.

16. In August, 1975, the Guardians of Michigan and I filed with LEAA a charge of discrimination against the Wayne County Sheriff's Department. I enclosed a copy of the Court's Memorandum Opinion and Order in *Reed* v. *Lucas*, *supra*, and urged LEAA to "immediately suspend all LEAA funding to Wayne County Sheriff's Department and [to] immediately initiate proceedings to recover all

unlawfully spent LEAA monies." I have received no response to my charge. (A copy of the charge is attached hereto as Exhibit C.)

17. I believe that the Wayne County Sheriff's Department has received approximately $3,830,000 in LEAA funds since 1970, and that the Department currently is a recipient or sub-grantee of approximately $871,000 in LEAA funds. LEAA has never suspended or terminated the LEAA funding of the Wayne County Sheriff's Department because of civil rights non-compliance.

/s/_____
ROBERT BOOTH

Sworn to before me this
15th day of October, 1975.

/s/_____
FRED C. BATTACHI
Notary Public

My Commission Expires March 13, 1976

We, the undersigned black deputies of the Wayne County Sheriff's Department, are concerned about irregularities in our Department. There are several Federally funded projects which have no black officers, specifically the Computer Section, Marine Division, Detective Bureau and Polygraph Section. We are conspiciously underrepresented in the Reception Diagnostic Center, Organized Crime Division and in other Federally funded areas.

We are calling this to your attention, for we feel that the insufficient representation of blacks in the above mentioned areas indicates discriminatory practices on the part of the Wayne County Sheriff's Office. The basis of our allegations is found in the legislation of Title VI and VII of the 1964 Civil Rights Act and in the Omnibus Crime Control and Safe Streets Act of 1973. A review of these laws would indicate that they specifically prohibit discrimination on the basis of race, color, national origin, or sex. As you know, violation of the provision of these laws would result in a loss of Federal funds.

We herein respectfully request that your office investigate this matter.

Sincerely,

/s/ Robert Hawkins

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil No. 74-72798

HENRY REED, ET. AL., PLAINTIFFS,

v.

WILLIAM LUCAS, ET AL., DEFENDANTS.

ORDER GRANTING PRELIMINARY INJUNCTIVE RELIEF

At a session of said court held in the Federal Building and U.S. Courthouse, Detroit, Michigan, on July 16, 1975.

Present: HONORABLE JAMES P. CHURCHILL
United States District Judge

Having conducted an evidentiary hearing on plaintiffs' Motion for Preliminary injunction, it is the Order of this Court that all promotions to the ranks of Detective and Deputy Inspector are enjoined except insofar as they comply with the conditions set forth in the Memorandum Opinion on this motion filed this date.

IT IS SO ORDERED.

/s/ _____
JAMES P. CHURCHILL
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil No. 74-72798

HENRY REED, ET AL., PLAINTIFFS,

v.

WILLIAM LUCAS, ET AL., DEFENDANTS.

MEMORANDUM OPINION

This is a class action civil rights suit by applicants to and members of the Wayne County Sheriff's Department alleging violations of Sections 1981, 1983, and 1985(3) of Title 42, U.S.C., by the Sheriff, members of the Wayne County Civil Service Commission, the Wayne County Board of Commissioners, Local 502-M, NUPO, and Local 1917, AFSCME, and their presidents. Discrimination against black applicants is alleged in the areas of hiring and promotion through the use of non-validated tests and other non-job-related criteria.

Plaintiffs have requested preliminary and permanent injunctive relief enjoining the use of non-validated tests for hiring and promotions, enjoining the use of provisional appointments to fill current vacancies, and enjoining the enforcement of collective bargaining contracts and Civil Service Rules which have the effect of discriminating against members of the plaintiff class. They have further requested a declaratory judgment that the defendants' practices violate Sections 1981, 1983, and 1985(3) of Title 42, U.S.C., as well as the Fourteenth Amendment of the Constitution. Finally, they request back pay to compensate for lost earnings due to the discriminatory practices complained of.

The plaintiffs have moved at this juncture for preliminary injunctive relief enjoining the Sheriff from making permanent or provisional appointments to the rank of De-

tective, Sergeant, Lieutenant, or Deputy Inspector, pending the hearing on the merits of this action.

They allege that the low turnover rate in the Sheriff's Department means that unless present vacancies are preserved, any injunctive remedy at the conclusion of the suit can have only minimal effect. Further, they allege that even if present appointments were made on a temporary basis if a new promotional system is instituted at the conclusion of this litigation, the incumbents in such temporary positions would have a substantial advantage over other applicants due to the experience gained in the position. Thus, they allege that opportunities for those presently unfairly excluded would be minimal.

On a motion for preliminary injunctive relief, courts balance several factors in determining whether or not to exercise the discretionary grant of relief. Primary among those factors are the likelihood of success on the merits, the extent of injury to the defendant if the injunction is granted, the public interest in the granting or denial of relief, and the significance of the threat of irreparable harm to plaintiffs if the injunction is not granted.

On the issue of likelihood of success on the merits, the plaintiffs have presented a statistical record drawn from reports made by the Sheriff's Department to the Wayne County Office of Human Relations between the years 1969 and 1974. These reports, as elucidated on the witness stand by Ms. Mary Leonard, the Administrative Assistant in charge of personnel for the Sheriff's Department, show the following breakdown by race for the ranks for which preliminary injunctive relief is sought.

Detectives		White	Black	% Black
	1969	18	1	5.2%
	1971	30	1	3.2%
Feb.	1972	21	1	4.5%
Dec.	1972	20	2	9.1%
	1974	26	3	10.3%

* Sergeants and Lieutenants			
1969	27	1	3.5%
1971		11	
Feb. 1972		9	
Dec. 1972		10	
1974	46	12	20.7%
Deputy Inspectors	White	Black	% Black
1969	3	0	0%
1971			0%
Feb. 1972			0%
Dec. 1972			0%
1974	7	0	0%

Statistics showing disparity in hiring or promotion of blacks as compared to whites make out a prima facie case of discrimination sufficient to shift the burden to the defendants to show that the criteria used in making hiring and promotional decisions are job-related. *Albermarle Paper Co.* v. *Moody*, ___ U.S. ___, Slip Opinion No. 74–389, decided June 25, 1975; *Pettway* v. *American Cast Iron*, 494 F.2d 211 (CA5 1975); *Rowe* v. *General Motors Corporation*, 457 F.2d 348 (CA5 1972); *Brooks* v. *Beto*, 366 F.2d 1 (CA5 1966), cert. den., 386 U.S. 975, 87 S.Ct. 1169, 18 L.Ed.2d 135 (1967). The statistics here presented show a great disparity in the percentage of black detectives and deputy inspectors as compared to the percentage of blacks in the present population of Wayne County, stipulated to be twenty-seven per cent (27%). It was suggested during argument that the relevant population for comparison of percentages of blacks should be Wayne County exclusive of the city of Detroit, since two divisions of the Sheriff's Department, the road patrol and the airport division, operate almost exclusively outside the city of Detroit. The Court rejects this suggestion as manifestly improper and accepts as the relevant basis the entire county which provides the population from which applications for employment are

* Available statistics provide no separate statistics for sergeants and lieutenants.

drawn. *Albermarle Paper Co.* v. *Moody*, supra, at 25. The Court does recognize that the current racial ratio within the county may not provide the most accurate standard for comparison with the Sheriff's Department; but since no other figure has been offered, the current statistics will be used for the purposes of this preliminary motion. The optimal figure might reflect the percentage of each race in the population at the time of hiring.

The plaintiff has presented further evidence of past discrimination in the area of assignment to the Road Patrol Division of the Department. There was evidence that experience in that division was advantageous to candidates sitting [for] the written and oral detectives examinations and that assignments to that division went overwhelmingly to white officers. Further evidence showed that the formerly discretionary assignment practices have been replaced by a strict seniority system of assignments to the various divisions. The Court finds that however invidious the past practice may have been, as time goes by the effects of that practice have diminished and will continue to diminish, if indeed they still exist.

A further instance of possible discrimination appeared in the system of provisional appointments to vacancies for which there was no current eligibility list. The evidence suggested that provisional appointments had been given to white officers, providing them with experience which, again, gave them a substantial advantage on the examination for promotion to the position as a permanent rank. This practice, too, has been discontinued, as the union contracts and the Civil Service Rules now require that there always be a current eligibility list from which promotions must be made in order of priority on the list. The effects of that system will likewise continue to diminish over time.

The defendants presented little evidence that the examinations and qualifications used for the challenged promotions were job-related, aside from pointing out the union contract provisions which require job-relatedness. The Court therefore finds as a preliminary determination that plaintiffs have shown a reasonable likelihood of success in showing at trial a racially discriminatory impact on promotions within the Wayne County Sheriff's Department.

The Court must counterbalance the public interest in the continued efficient operation of the Sheriff's Department. Any injunction which caused continuing vacancies in the authorized table of organization of the Department would jeopardize that efficient operation. The evidence shows that even if promotions were enjoined, the functions attributable to those positions would in fact be subsumed by other officers, who would gain experience and thus an advantage on the promotional examination for those positions. The potential for discriminatory abuse in such an ad hoc system would be at least as great as that under the provisional appointment system sought to be enjoined by plaintiffs.

Nonetheless, the evidence shows that there exists a substantial risk of further discrimination if the present tests for promotion to the ranks of detective and deputy inspector continue in use. The testimony indicated an extremely low turnover rate within the Department, which could cause irreparable harm to the plaintiffs if the potentially discriminatory promotions are allowed to continue.

Any effective preliminary relief must satisfy both the overwhelming public interest in maintaining the efficiency of the Sheriff's Department and the plaintiffs' apparently well-founded objection to the present promotional system. A solution similar to that adopted by the First Circuit in *Castro* v. *Beecher*, 459 F.2d 725 (1972), seems best to harmonize those opposing interests. That solution called for the adoption of new tests and the hiring of minorities in a set ratio to be specified by the trial court. No new tests can possibly be validated and implemented here in time for use as part of a preliminary order.

The present promotional tests and qualifications in all probability contain some elements which cause them to operate differentially on black and white applicants. It is impossible at this stage in the proofs for the Court to determine exactly what aspect of the promotional system causes this impact. There has been evidence from the defendants of attempts, albeit non-professional, to insure that the questions on the detectives examination are both job-related and culturally unbiased. No alternative interim sys-

tem for promotions has been suggested by either side. The Court will therefore order the present Civil Service Commission rules regarding promotions, as modified by the current union contracts, to continue in operation pending a determination on the merits of this suit, subject to the conditions set forth below.

Promotions to the ranks of detective and deputy inspector may proceed only on the following basis: One out of every two persons promoted to detective and to deputy inspector must be a member of the black race. Within that framework, the only modification of the present rules for use of the eligibility lists will be the provision that a black person on the current eligibility list may be appointed to detective or to deputy inspector even though there may be a white person higher up the appropriate list at the time of the promotion. Should the percentage of blacks in either rank reach the percentage of blacks in the population of Wayne County before resolution of this suit on the merits, then the ratio shall be reduced to one black for every three whites promoted to either rank.

To the extent and under the conditions outlined herein, the plaintiffs' Motion for Preliminary Injunction will be granted.

/s/ _____
JAMES P. CHURCHILL
United States District Judge

Dated: July 16, 1975

Officer Robert Booth
24290 Norfolk
Detroit, Michigan 48219
August 14, 1975

Herbert C. Rice, Director
Office of Civil Rights Compliance
Law Enforcement Assistance Administration
United States Department of Justice
Washington, D.C. 20530

Dear Mr. Rice:

Some months ago, Bobby Hawkins, a member of the Guardians of Michigan, Inc., submitted an LEAA charge to your office complaining of discrimination in the Wayne County Sheriff's Department. Since there apparently has been no investigation of Hawkins' charge, and since a federal court recently held that discrimination exists within the Wayne County Sheriff's Department, I hereby submit this charge on behalf of myself, of the Guardians of Michigan, and of its members.

As you're undoubtedly aware, there are very few promotional ranks in the Wayne County Sheriff's Department which have been filled by black deputy sheriffs. Of 29 detectives, there are only 3 (or 10.3%) black detectives; of 40 sergeants, there are only 7 (or 17.5%) black sergeants; there are only 5 black lieutenants; and of 7 deputy inspectors, there are no black deputy inspectors.

In order to be eligible for promotion, the Wayne County Sheriff's Department requires exorbitant time-in-grade experience as a deputy sheriff, and requires successful passage of discriminatory written tests. No promotion requirement has been validated or related to job performance.

As I believe you're aware, we brought two lawsuits last year against the Department challenging its racially discriminatory promotion practices: *Hawkins* v. *Lucas*, 74–032928 (Cir. Ct. of Wayne Cty., Mich., filed Oct. 4, 1974) which asserts violations of state law; and *Reed* v. *Lucas*, 74–72798 (E.D. Mich., filed Nov. 18, 1974) which asserts violations of federal law.

Approximately one month ago, on July 16, 1975, the Court in *Reed* entered a Memorandum Opinion and Order in which the Court found it likely that the plaintiffs would prevail on the merits and thus preliminarily enjoined the Department from promoting any deputy sheriffs to the ranks of detective and deputy inspector other than on a one-to-one, black-white basis. Encompassed in its Memorandum Opinion and Order is the Court's determination that the Wyne County Sheriff's Department has violated federal employment discrimination laws. A full trial on the merits, however, will not be held until sometime this winter, at the earliest.

Currently the Wayne County Sheriff's Department is receiving more than $800,000 in LEAA funding. Since the Department, pursuant to judicial determination, has violated federal law in the past and apparently is currently in violation of federal law since there is no indication that its discriminatory practices have ceased, I urge that you immediately suspend all LEAA funding to the Wayne County Sheriff's Department and immediately initiate proceedings to recover all unlawfully spent LEAA monies.

Enclosed for your convenience is a copy of the court's recent decision in *Reed*.

Sincerely,

ROBERT BOOTH

enc.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

---

75 Civ. 1444
Judge Corcoran

NATIONAL BLACK POLICE ASSOCIATION, ET AL., PLAINTIFFS,

v.

RICHARD W. VELDE, ET AL., DEFENDANTS.

AFFIDAVIT

State of Hawaii)
) ss.
County of Honolulu)

JENNIE McALLISTER, being duly sworn, deposes and says:

1. I am a named plaintiff in the above-entitled case.

2. I am a female citizen of the United States; am of Chinese descent; and am a resident of Honolulu, Hawaii.

3. I have been discriminated against by the Honolulu Police Department.

4. The Honolulu Police Department employs approximately 1461 sworn police officers, of whom only 10 (or approximately .7%) are women.

5. During the past year, all applicants for employment as a police officer with the Honolulu Police Department were required to meet a minimum height requirement of 5'7". Prior to the fall of 1974, the minimum height requirement had been 5'8". Both requirements have a sexually discriminatory impact upon female applicants. Neither requirement had ever been professionally validated to determine its va-

lidity, predictive or otherwise, as a measure of job performance for the job of police officer, nor has either requirement been shown to be of operational necessity to the performance of that job.

6. I am studying toward my AA degree in police science and working toward a brown belt in Karate. I stand 5'4" in height.

7. In June, 1974, I filed an application for employment as a police officer with the Honolulu Police Department. Shortly thereafter, my application was summarily rejected solely because I did not meet the then 5'8" height requirement.

8. In July, 1974, I filed a charge of sex discrimination with the EEOC, and in May, 1975, the United States Department of Justice issued a right-to-sue letter to me. In July 1975, I filed a complaint in the United States District Court charging Honolulu officials with sex discrimination in violation of Title VII of the Civil Rights Act of 1964 and in violation of LEAA's Equal Rights Guidelines, 38 Fed. Reg. 6415 (1973) reissued (1974), see *McAllister* v. *Honolulu*, Civ. No. 75–248 (D.Haw., filed July 17, 1975).

9. Honolulu's minimum height requirement has been subjected to close review by LEAA. In 1972, Lucile Abreu, a police officer with the Honolulu Police Department, filed a charge of discrimination with LEAA. Officer Abreu had been denied promotion to detective because she did not meet the 5'8" height requirement then applicable to male police officers. In 1973, after an investigation, LEAA determined that the minimum height requirement was discriminatory and not job related, and that the Police Department was not in civil rights compliance. Thereafter, LEAA unsuccessfully sought to obtain civil rights compliance from Honolulu officials and, I believe, from the chief executive of the State of Hawaii.

10. On September 29, 1975, approximately three weeks after I filed the above-styled lawsuit against LEAA and various of its officials, the Mayor of Honolulu publicly announced that the minimum height requirement of the Honolulu Police Department would be eliminated. Although

it thus appears that the discriminatory and unlawful minimum height requirement will be eliminated, it remains uncertain as to whether I will be given employment, back pay, and retroactive seniority from the date I was unlawfully denied employment.

11. I believe that the Honolulu Police Department has received more than $300,000 in LEAA funding, and is currently a recipient or subgrantee of approximately $150,000 in LEAA funding. LEAA has never terminated funding to the Honolulu Police Department.

/s/ _____
JENNIE MCALLISTER

Sworn to before me this
12th day of November, 1975.

/s/ _____
Notary Public

Evan R. Shirley (1220–0)
Kendall Building
888 Mililani Street
Honolulu, HI 96813
Telephone No. 524-1396
Attorney for plaintiff

Of Counsel:
American Civil Liberties Union
of Hawaii Foundation
217 South King Street
Honolulu, Hawaii 96813
Telephone No. 538-7336

McALLISTER EXHIBITS

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

Civil No. 75-248

JENNIE A. McALLISTER, Individually and on behalf of others similarly situated, PLAINTIFFS,

vs.

CITY AND COUNTY OF HONOLULU; FRANCIS KEALA, Individually, and in his capacity as Chief of Police; HENRY BORANIAN, Individually, and in his capacity as Director of Civil Service; THOMAS K. SING, Individually, and in his capacity as Chairman, Civil Service Commission, HIROO MIYAGI, JOSEPH HUNTER, RAY TANAKA, DANIEL PACRECO, Individually, and in their capacity as Members of Civil Service Commission; DEFENDANTS.

COMPLAINT: EXHIBITS "A" THROUGH "D"; SUMMONS

COMPLAINT

PRELIMINARY STATEMENT AND JURISDICTION

1. Plaintiff JENNIE A McALLISTER challenges the minimum height requirement of five feet seven inches (5'7") established for employment as a Police Services Officer with the City and County of Honolulu.

2. Plaintiff alleges that this arbitrary standard serves to separate the men from the women and especially to separate the men from the women of Oriental descent from equal employment opportunities guaranteed by Title VII of the Civil Rights Act of 1964.

3. Plaintiff asserts that this arbitrary minimum height requirement operates as a deprivation of both constitutional and statutory rights by the disparate impact on women and especially on women of Oriental descent who apply for the position of a Police Services Officer with the City and County of Honolulu.

4. Jurisdiction is founded on the Constitution and Laws of the United States and on 28 U.S.C. Section 1343 (3) and (4).

5. Plaintiff has met the jurisdictional requirements established by 42 U.S.C. Section 2000e–5 in that she filed a complaint with the Equal Employment Opportunity Commission on July 18, 1974, within 180 days of the alleged discriminatory act. On May 20, 1975 she received from the United States Department of Justice, pursuant to 42 U.S.C. 2000e–5(f), notice of her right to institute a civil action.

6. Plaintiff seeks, for herself and for the assorted classes she represents, injunctive relief authorized by 42 U.S.C. Section 2000e–5(g).

7. Plaintiff seeks, for herself and for the asserted classes she represents, a declaratory judgment pursuant to 28 U.S.C. Sections 2201–2202 that the five foot, seven inch (5′7″) minimum height requirement for employment as a Police Services Officer for the City and County of Honolulu violates the Constitution and Laws of the United States in that this employment requirement invidiously discriminates against women and especially against women of Oriental descent.

8. Plaintiff requests, for herself and for the asserted classes she represents, that defendants be enjoined from maintaining unlawful practices which have the purpose and/or effect of discrimination against applicants for the position of Police Services Officer on the basis of sex and/or sex and race. Such practices include, but are not limited to, discrimination by reason of sex and/or sex and race in the recruiting, testing, and hiring of women and especially women of Oriental descent for the position of Police Services Officer for the City and County of Honolulu.

9. Plaintiff seeks, for herself, damages authorized by 42 U.S.C. Section 2000e–5(g).

PARTIES

10. Plaintiff JENNIE A. McALLISTER is a resident of the City and County of Honolulu and a citizen of the United States. She is a 29 year old woman of Chinese descent and is five feet, four inches (5'4") in height, weighing 135 pounds.

11. Plaintiff brings this action on her own behalf and, pursuant to Rule 23(a) and (b)(2) of the *Federal Rules of Civil Procedure*, on behalf of:

A. All women who have similarly attempted or hereafter may attempt to obtain employment as a Police Services Officer with the defendant CITY AND COUNTY OF HONOLULU, and who have been or hereafter may be denied the right to apply for said position because of their inability to meet the minimum height requirement;

B. All women of Oriental descent who have similarly attempted or hereafter may attempt to obtain employment as a Police Services Officer with the defendant CITY AND COUNTY OF HONOLULU, and who have been or hereafter may be denied the right to apply for said position because of their inability to meet the minimum height requirement.

12. The classes which Plaintiff represents and which plaintiff asserts are so numerous that the joinder of all members is impractical. There are questions of law or fact common to the asserted classes. The claims of the Plaintiff are typical of the claims of the asserted classes. The Plaintiff will fairly and adequately protect the interest of the asserted classes. Defendants, who are the parties that may oppose the asserted classes, have acted or refused to act on grounds generally applicable to the entire asserted classes, thereby making final injunctive relief or corresponding declaratory relief with respect to the asserted classes as a whole appropriate.

13. Defendant CITY AND COUNTY OF HONOLULU is a municipal corporation operating pursuant to the laws of the State of Hawaii.

14. Defendant FRANCIS KEALA is the Chief of Police of the City and County of Honolulu and is named in his individual and official capacities.

15. Defendant HARRY BORANIAN is the Director of Civil Service of the City and County of Honolulu and is named in his individual and official capacities.

16. Defendant THOMAS K. SING is the Chairman of the Civil Service Commission of the City and County of Honolulu and is named in both individual and official capacities.

17. Defendants HIROO MIYAGI, JOSEPH HUNTER, RAY TANAKA, DANIEL PACHECO are members of the Civil Service Commission of the City and County of Honolulu and are named in their individual and official capacities.

STATEMENT OF THE CLAIM

18. Plaintiff JENNIE A. McALLISTER meets, or can meet if allowed to, all requirements to be appointed to the position of Police Service Officer II for the City and County of Honolulu save and except the minimum height requirement.

19. On or about June 12, 1974 Plaintiff filed an application for the position of Police Services Officer II with the Civil Service Department of the city and County of Honolulu.

20. On or about June 27, 1974, Defendant CITY AND COUNTY OF HONOLULU summarily rejected Plaintiff's application solely because her height [five feet, four inches (5'4")] was not at least five feet, eight inches (5'8").

21. Thereafter, the height limitation was lowered by the City and County of Honolulu to five feet, seven inches (5'7") and has, to date, remained five feet, seven inches (5'7").

22. On or about July 17, 1974, Plaintiff filed a formal appeal contesting the rejection of her employment application

with the Civil Service Commission of the City and County of Honolulu.

23. On or about July 18, 1974, Plaintiff filed a formal Charge of Discrimination with the United States Equal Employment Opportunity Commission [The Charge of Discrimination filed by Jennie McAllister on July 18, 1974 is attached hereto as Exhibit "A" and made a part hereof].

24. On or about September 23, 1974, a hearing was held before said Civil Service Commission, and, on or about April 28, 1975, said Civil Service Commission denied Plaintiff's appeal [The letter to Jennie A. McAllister from Thomas K. Sing, Chairman, Civil Service Commission, City and County of Honolulu dated May 6, 1975 is attached hereto as Exhibit "B" and made a part hereof].

25. On or about May 20, 1975, the United States Department of Justice issued a "Right to Sue Letter" [The letter to Jennie McAllister from J. Stanley Pottinger, United States Department of Justice, dated May 20, 1975 is attached hereto as Exhibit "C" and made a part hereof].

26. Defendant CITY AND COUNTY OF HONOLULU has arbitrarily through its minimum height requirement denied Plaintiff, and the asserted classes she represents, the opportunity to qualify as police officer for the City and County of Honolulu.

27. The population of the City and County of Honolulu is approximately forty-eight per cent (48%) women and seventeen per cent (17%) women of Oriental descent. Exclusion of women and especially women of Oriental descent from employment as police officers with the City and County of Honolulu—and this is a direct effect of the height requirement—has denied Plaintiff, and the asserted classes she represents, the rights and protections guaranteed by the Fifth, Thirteenth and Fourteenth Amendments to the United States Constitution as well as the laws of the United States.

28. The minimum height requirement was not, is not, and has not been professionally developed in relation to modern police science techniques.

29. The minimum height requirement was not, is not, and has not been established as a result of critical, valid, and verifiable job analysis for the position of Police Services Officer.

30. The minimum height requirements was not, is not, and has not been validated to establish predictive evidence that the height requirement accurately measures job performance of women and especially of women of Oriental descent.

31. The minimum height requirement of five feet, seven inches (5'7") directly results in significant disparate impact upon women and especially upon women of Oriental descent applying for position of Police Services Officer with the City and County of Honolulu.

32. Defendant CITY AND COUNTY OF HONOLULU presently receives funds from the United States Law Enforcement Assistance Administration which are used to upgrade the quality of police services. The minimum height requirement in question violates the Equal Rights Guidelines of the Law Enforcement Assistance Administration, 38 Fed. Reg., No. 46, p. 6415 (March 9, 1973) [The Equal Rights Guidelines of the Law Enforcement Assistance Administration are attached hereto as Exhibit "D" and made a part hereof].

33. Plaintiff and the asserted classes she represents, desiring to serve the community in which they live, have suffered and are continuing to suffer irreparable harm due to the individuals discrimination in employment by Defendants against women and especially against women of Oriental descent.

34. Plaintiff and the asserted classes she represents have no plain, adequate or complete remedy at law to redress the wrongs alleged. Plaintiff and the asserted classes she represents are now suffering and will continue to suffer irreparable injury from Defendant's policy, practice, custom, usage and conduct as set forth herein.

PRAYER

WHEREFORE, Plaintiff's prays that this Honorable Court:

a) Assume jurisdiction of this cause.

b) Determine by Order pursuant to the Federal rules of Civil Procedure, Rule 23(c)(1), that the action by Plaintiff and the classes she represents and asserts may be maintained as a class action.

c) Grant Plaintiff, JENNIE A. McALLISTER an Order restraining Defendants from arbitrarily declaring Plaintiff ineligible to apply for the position of Police Services Officer II on the basis of any unvalidated and irrelevant employment qualification tests which have a disparate effect upon women solely because of their sex and upon women of Oriental descent because of their sex and race.

d) Grant Plaintiff and the asserted classes she represents an Order restraining defendants from arbitrarily declaring Plaintiff and the asserted classes she represents ineligible to apply for positions of Police Services Officers on the basis of any unvalidated and irrelevant employment qualification tests which have a disparate effect upon women solely because of their sex and upon women of Oriental descent because of their sex and race.

e) Grant Plaintiff JENNIE A. McALLISTER a declaratory judgment that the practice and policy of defendants of requiring Plaintiff as an applicant for the position of Police Services Officer II to meet the minimum height standard of five feet, seven inches (5'7") is illegal, unlawful, and unconstitutional.

f) Grant Plaintiff and the asserted classes she represents a declaratory judgment that the practice and policy of defendants of requiring all applicants for the position of Police Services Officer to meet the minimum height standard of five feet, seven inches (5'7") is illegal, unlawful, and unconstitutional.

g) Order Defendants to permit Plaintiff JENNIE A. McALLISTER to take the examination for Police Services Officer II, and when qualified, Order Plaintiff hired.

h) Order Defendants to permit Plaintiff and the asserted classes she represents to take the examinations for Police Services Officers and when qualified, Order them hired.

i) If hired, award Plaintiff JENNIE A. McALLISTER back wages, job security and other benefits as if she would have been hired pursuant to her application of June 12, 1974 to the Civil Service Department of the City and County of Honolulu.

j) Award to Plaintiff her costs of suit.

k) Award to Plaintiff her attorney's fees, pursuant to 42 U.S.C. Section 2000e-5(k).

l) Following a hearing of the action according to law, issue on behalf of Plaintiff JENNIE A. McALLISTER an Order retaining jurisdiction of her claim until such time as this Court is assured that from the activity of Defendants and their agents that the violations of rights complained of herein have ceased, are no longer threatened, and the continuing effect of past violations has been permanently and completely removed.

m) Following a hearing of the action according to law, issue on behalf of Plaintiff, and the asserted classes she represents an Order retaining jurisdiction of their claim until such time as the Court is assured that from the activity of Defendants and their agents that violations of rights complained of herein have ceased and are no longer threatened and the continuing effect of past violations has been permanently and completely removed.

n) Grant Plaintiff JENNIE A. McALLISTER such other relief as is necessary and appropriate in this case.

o) Grant Plaintiff and the asserted classes she represents such other relief as is necessary and appropriate in this case.

DATED: Honolulu, Hawaii this 17th day of July, 1975.

/s/ _____

EVAN R. SHIRLEY
Attorney for Plaintiff

(PLEASE PRINT OR TYPE)

CHARGE OF DISCRIMINATION	EEOC CHARGE NO.	FORM APPROVED OMB NO.

INSTRUCTIONS
If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's District Office in your area. In most cases, a charge must be filed with the EEOC within a specified time after the discriminatory act took place. IT IS THEREFORE IMPORTANT TO FILE YOUR CHARGE AS SOON AS POSSIBLE. *(Attach extra sheets of paper if necessary.)*

CAUSE OF DISCRIMINATION
- [X] RACE OR COLOR
- [X] SEX
- [ ] RELIGIOUS CREED
- [ ] NATIONAL ORIGIN

NAME (Indicate Mr. or Mrs.)		DATE OF BIRTH
Ms. Jennie A. McAllister		January 25, 1946
STREET ADDRESS: 739 A-1 Judd Street	COUNTY: Honolulu	SOCIAL SECURITY NO.: 576-46-3855
CITY, STATE, AND ZIP CODE: Honolulu, Hawaii 96817		TELEPHONE NO. (Include area code): (808) 524-2624

THE FOLLOWING PERSON ALWAYS KNOWS WHERE TO CONTACT ME

NAME (Indicate Mr. or Mrs.)	TELEPHONE NO. (Include area code)
Ms. Betty L. Anderson	(808) 521-7310
STREET ADDRESS: 1650 Liholiho Street, Apt. 508	CITY, STATE, AND ZIP CODE: Honolulu, Hawaii 96822

LIST THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT WHO DISCRIMINATED AGAINST YOU *(If more than one, list all)*

NAME	TELEPHONE NO. (Include area code)
City & County of Honolulu, Department of Civil Service	(808) 546-2814
STREET ADDRESS: City Hall Annex	CITY, STATE, AND ZIP CODE: Honolulu, Hawaii 96813

OTHERS WHO DISCRIMINATED AGAINST YOU *(If any)*

CHARGE FILED WITH STATE/LOCAL GOV'T. AGENCY	DATE FILED	AGENCY CHARGE FILED WITH (Name and address)
[X] YES [ ] NO	June 10, 1974	State of Hawaii, Department of Labor and Industrial Relations, 825 Mililani Street (C. Mitsuyama)

APPROXIMATE NO. OF EMPLOYEES/MEMBERS OF COMPANY OR UNION THIS CHARGE IS FILED AGAINST	DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE (Month, day, and year)
Honolulu Police Dept. 1,758	June 27, 1974

Explain what unfair thing was done to you and how other persons were treated differently. Understanding that this statement is for the use of the United States Equal Employment Opportunity Commission, I hereby certify:

The City and County of Honolulu, Department of Civil Service as the personnel arm of the Honolulu Police Department has rejected my application to the police force solely on the basis that my height does not meet the 5'8" minimum requirement. This height requirement discriminates firstly against the female sex, only approximately 5% of which are 5'8" or taller, and secondly against the Oriental race, whose average height is well under the stated requirment. In the past, women and non-caucasian persons have been restricted in their job opportunities to positions that were without height requirements. Actual rejections were few because such positions were avoided. However, the discrimination existed and remains presently. In a community in which approximately 60-70% of the citizens are of non-caucasian origin, the height requirement precludes persons from obtaining positions with the Police Department who qualify in every other respect, including background in, knowledge of, and ability to relate to the community.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

DATE	CHARGING PARTY (Signature)
JUL 15 1974	[signature]

Subscribed and sworn to before me this EEOC representative.

DATE	EEOC REPRESENTATIVE AND TITLE

NOTARY PUBLIC

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year): July 15, 1974

[signature]

Commission expires 6-30-78

SIGNATURE OF NOTARY (If it is necessary for you to get a Notary Public to sign this, sign your own name and mail to the District Office. The Commission will notarize the charge for you at a later date.)

EEOC Form 5 (Rev. 1-71) Previous editions of this form may be used.

GPO 883-811

487

DEPARTMENT OF CIVIL SERVICE
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII 96813

May 6, 1975

Ms. Jennie A. McAllister
739 A-1 Judd Street
Honolulu, Hawaii 96817

Dear Ms. McAllister:

This is to inform you that the Civil Service Commission at its meeting of April 28, 1975 denied your appeal against the minimum qualification requirements for the position of Police Services Officer II.

Formal findings of fact and conclusions of law will be transmitted to you upon approval by the Commission.

Sincerely,
CIVIL SERVICE COMMISSION
THOMAS K. SING
Chairman

cc: American Civil Liberties
Union of Hawaii

UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

NOTICE OF RIGHT TO SUE
WITHIN 90 DAYS

May 20, 1975

AIR MAIL

Ms. Jennie A. McAllister
% Evan R. Shirley, Esquire
Attorney at Law
The Kendall Building
888 Mililani Street
Honolulu, Hawaii 96813

Re: EEOC Charge Against City & County of Honolulu, Department of Civil Service No. TSF5-C155

Dear Ms. McAllister:

Because you have filed a charge against the respondent named above and more than 180 days have elapsed since the Equal Employment Opportunity Commission assumed jurisdiction over that charge, and no suit based on that charge has been filed by this Department, and since you through your attorney have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.*, against the above-named respondent.

If you choose to commence a civil action, such suit must be filed in the appropriate United States District Court within 90 days of your receipt of this Notice.

Your attorney may inspect the investigative file pertaining to the case at a time and place convenient to the parties. That file is located in the EEOC District Office, at 1390 Market Street, Suite 325, San Francisco, California 94102.

We request that you send this Department a copy of any complaint initiating suit.

This Notice should not be taken to mean that an agency of the United States has made a judgment as to whether or not your charge is meritorious.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

By:

HERBERT A. GOLDSMITH, JR.
Attorney
Employment Section

cc: Mr. Monte B. Posey
District Director
San Francisco District Office
Equal Employment Opportunity
Commission
1390 Market Street, Suite 325
San Francisco, California 94102

Jennie McAllister
739 A-1 Judd Street
Honolulu, Hawaii

August 26, 1975

Office of Civil Rights Compliance
Law Enforcement Assistance Administration
United States Department of Justice
Washington, D.C. 20530

Dear Gentlepeople:

In late 1972, or in early 1973, a charge of discrimination was filed with your office alleging that the minimum height requirement of the Honolulu Police Department was sex discriminatory. In the summer of 1972, I believe, you made a determination that the minimum height requirement was unlawful and that Honolulu was thus *not* in civil rights compliance; thereafter, and until now, I believe you have unsuccessfully sought to obtain civil rights compliance.

In the meantime, Honolulu's minimum height requirement has continued to be used to reject qualified applicants from obtaining employment as police officers. I am one such applicant.

I am a woman, and am of Chinese descent. I was denied employment by the Honolulu Police Department in June, 1974, and continue to be denied such employment, solely on the grounds that I cannot meet the minimum height requirement.

On the basis of your previous investigation, your determination of noncompliance, and your unsuccessful effort in achieving voluntary compliance, I hereby urge you to immediately suspend all LEAA funding to Honolulu.

Sincerely,

/s/ _____

JENNIE MCALLISTER

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civ. No. 75–1444
Judge Corcoran

NATIONAL BLACK POLICE ASSOCIATION, INC., ET AL., PLAINTIFFS,

v.

RICHARD W. VELDE, ET AL., DEFENDANTS.

AFFIDAVIT

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

E. RICHARD LARSON, being first duly sworn, deposes and says:

1. I am one of the attorneys for the plaintiffs in the above-styled action. I submit this affidavit pursuant to Rule 56(e) of the Federal Rules of Civil Procedure in opposition to defendants' Motion for Summary judgment.

2. With several exceptions, nowhere in defendants' motion papers do they set forth facts or even allegations about the dollar amount of their LEAA funding to recipient law enforcement agencies, or even about their providing LEAA funding to recipient law enforcement agencies.

3. On August 7, 1975, I served a Freedom of Information Act request upon defendant Richard Velde requesting, *inter alia*, an "enumeration" of all LEAA discretionary funding and LEAA block grant funding from FY 1972 through FY 1976 which had been provided to approximately fifty specified law enforcement agencies. Enclosed with a letter from LEAA dated August 21, 1975 was a computer printout in response to my FOIA request.

4. Filed with plaintiffs' Opposition papers (but not attached hereto because of bulk) are copies of my FOIA request; of LEAA's response letter; and those portions of LEAA's computer print-out which relate to defendants' LEAA funding of various of the law enforcement agencies mentioned in defendants' unsworn and uncertified Statement of Reasons and Appendix, i.e., Ames Police Department, Cleveland Police Department, Des Moines Police Department, Detroit Police Department, Honolulu Police Department, Indiana State Police Department, New Orleans Police Department, New York City Police Department, Newton Police Department, Oakland Police Department, Philadelphia Police Department, Portland Police Bureau, Richmond Police Department, St. Louis Police Department, Wayne County Sheriff's Department. Copies of those portions of the computer print-out pertaining to the Philadelphia Police Department and to the Richmond Police Department are already on file with this Court, see Plaintiff's Motion for a Preliminary Injunction and a Writ of Mandamus, pp 53–68, 117–125 (served January 14, 1976).

/s/_____
E. RICHARD LARSON

Sworn to before me this
22nd day of March, 1976

/s/_____
BELLA GREENE
Notary Public

In the Supreme Court of the United States

No. 80-1074

RICHARD W. VELDE, ET AL., PETITIONERS,

v.

NATIONAL BLACK POLICE ASSOCIATION, INC., ET AL.

ORDER ALLOWING CERTIORARI

Filed May 4, 1981

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

Justice Powell and Justice Stevens took no part in the consideration or decision of this petition.